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HEARINGS

BEFORE THE COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE OF THE
U.S. HOUSE OF REPRESENTATIVES

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ON THE BILLS
RELATING TO

PANAMA CANAL MATTERS

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PANAMA CANAL MATTERS.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, March 31, 1908.

Committee called to order at 10.40 a. m., Hon. W. P. Hepburn in the chair.

DISPOSITION OF LANDS ON PANAMA CANAL ZONE (H. R. 18694).

STATEMENT OF MR. RICHARD B. ROGERS, GENERAL COUNSEL ISTHMIAN CANAL COMMISSION.

The CHAIRMAN. We are to hear Mr. Rogers this morning in regard to the land matters upon the Isthmus of Panama.

Mr. MANN. If you have a copy of the bill, will you please tell us the reasons for its passage?

Mr. ROGERS. The land laws of the United States of course do not extend to the Isthmus of Panama and the Canal Zone, and the land situation there has gotten into a condition where practically nothing can be done with the land at all. The title to a great portion of the lands that are claimed by private proprietors on the Zone is in doubt, and there is no authority on the part of any officer of the Government to make leases of any public lands for a longer period than five years, and even authority to make leases for a period of five years is a deduction from the general authority given the Secretary of War to lease public property under his control. The result has been that there has been no development of the Canal Zone either agriculturally or practically in any other direction. There is a great deal of fertile land in the Zone which it is believed could be opened up to cultivation, and if so cultivated it is believed that it would be of a distinct advantage not only to the inhabitants of the Zone, but to the progress of the work. There is a great deal of land there which might be successfully grazed, and that would give a very much more abundant supply of live stock than at present. But practically nothing can be done in that direction because of the inability of any of the officers of the Canal Zone government to lease the land for a longer period than five years.

The land is wild land, and if you make a lease to a tenant for a period of five years, before the tenant can derive any benefit at all from the land, he is compelled to clear it up and build upon it some form of habitation, something which he and his family can live in, and in some cases he is required to do some fencing. Then he is required to pay annually \$3 in gold per hectare, which is a reduction from the \$6 charged by the French, but still a considerable charge. All these burdens together make it a question whether a tenant really can afford to take the land and make any desirable improvements.

Mr. MANN. How much is a hectare?

Mr. ROGERS. Two and one-third acres. Inasmuch as the tenants now only have the certainty of keeping the property five years, the first aspect of the bill is intended to meet this situation. It is believed that if authority be conferred upon some appointee of the President to make leases of the lands in the Canal Zone for a period of, say, twenty-five years, that the result will be beneficial.

Mr. RICHARDSON. Is there any rule or regulation now in existence by which these leases can or have been made?

Mr. ROGERS. They make leases there for a period of five years at a uniform rate for agricultural lands of \$3 gold per hectare.

Mr. HUBBARD. How is that rate fixed?

Mr. ROGERS. It is a flat rate.

Mr. HUBBARD. Who fixes it?

Mr. ROGERS. It is fixed by the Commission.

Mr. HUBBARD. Is it intended that that rate shall remain as the future rate?

Mr. ROGERS. There has been considerable agitation to reduce it to \$1.50 gold per hectare.

Mr. MANN. There is great need for the raising of vegetables, produce, and market stuff for the benefit of our people on the Zone, is there not?

Mr. ROGERS. I think so, yes.

Mr. MANN. That land is now wild, and uncultivable in most places, excepting where it has been worked for a series of years.

Mr. ROGERS. That is true.

Mr. MANN. And you want to be able to make a lease long enough so as to encourage people to cultivate?

Mr. ROGERS. Yes; that is the first aspect of the bill.

Mr. MANN. Not merely in the interest of the people who cultivate it, but for the benefit of the people living there so that they may obtain fresh vegetables and other products?

Mr. ROGERS. That is correct.

Mr. RICHARDSON. What would be the difference between the effect of this bill if enacted into law, and the present rules and regulations already prescribed and applied?

Mr. MANN. The President does not claim any authority to control the leasing of lands down there?

Mr. ROGERS. Oh, no. The only leases of land made upon the Canal Zone at all are leases made under a statute which authorized the Secretary of War to lease the unused public property in his custody, and it is by a liberal interpretation of that statute that we have been able to make any leases upon the Zone. We have made them under that statute for a period not exceeding five years at a flat rate of \$3 gold per hectare.

Mr. WANGER. Agricultural lands?

Mr. ROGERS. Yes. The town lots are rented on the basis of so much per square meter; that is the local custom.

Mr. WANGER. What acreage has already been leased?

Mr. ROGERS. There have been about 850 leases made upon the Zone, but the total amount of acreage I do not know. Those leases are usually of very small tracts, and generally are leases of town lots. Some of the native villages are on the public domain, and most of the leases relate to houses and lots in these different towns.

Mr. MANN. I have a full statement of all the leases that have been made down there, which I will lay before the committee later.

Mr. ROGERS. There have been about 850 altogether, of every kind. It has been recently recommended by the officers of the Canal Zone government who are interested in this land matter that this authority be granted, and I think everyone who has considered the situation is satisfied that it would be a distinct advantage to permit a longer lease to be made than can be made at present.

Mr. MANN. This bill reserves the right of the government to use any of the land at any time.

Mr. ROGERS. Absolutely, yes.

Mr. MANN. If it should become necessary to overflow any land in connection with the canal construction or for any other purpose, the leases be canceled?

Mr. ROGERS. Yes.

Mr. ESCH. You allow certain compensations, do you not?

Mr. ROGERS. Compensation shall be made for the value of the improvements only. There is another aspect of the bill, however, that I want to invite the attention of the committee to.

Mr. MANN. Yes; in regard to the settlement of title.

Mr. WANGER. Before you go to that, is there any discrimination made between lands that are only adapted for grazing and lands which are suitable for raising vegetables?

Mr. ROGERS. No, sir.

Mr. WANGER. Ought there not to be?

Mr. ROGERS. There never has been any such distinction made, because agriculture and grazing are in such a primitive condition upon the Isthmus that they have been glad to get land developed in any way possible.

Mr. MANN. There has been very little land leased down there. I took up the matter very carefully when I was there.

Mr. ROGERS. Yes; scarcely any land has been leased for agricultural purposes, and most of those leases, as I stated before, are for town lots.

Mr. WANGER. Have you fairly well determined how much of the land would be flooded?

Mr. ROGERS. Yes, it has been fairly well determined.

Mr. MANN. Two hundred and twelve square miles above the lake.

Mr. ROGERS. I think the later calculations reduce that to about 168 square miles. Or rather, that is the latest calculated area of Lake Gatun.

Mr. WANGER. Do you not think that there is likelihood of mistakes being made in the leasing of the land?

Mr. ROGERS. I do not think there will be any mistakes made—in what respect do you mean?

Mr. WANGER. In the leasing of the land subsequent, the land that would be overflowed?

Mr. ROGERS. I do not think there is any danger of that; because the 85-foot contour has been surveyed and they can tell with approximate precision exactly where the line runs. The monuments are there, so they can tell exactly, practically, where the land will be above water and where it will lie under water.

Mr. ADAMSON. You speak of the desirability of devoting some of that land to the raising of vegetables. Have you given sufficient

attention to the matter to be able to say as to with what difficulty this tropical land will yield to cultivation so as to get it so it can be cultivated easily, like our land here?

Mr. ROGERS. There are very few truck gardens on the Isthmus at all, and practically the only truck gardens that exist are those run by Chinamen. They seem to have no difficulty in raising abundant crops.

Mr. ADAMSON. Does that spontaneous tropical growth continue from year to year to give trouble in cultivation?

Mr. ROGERS. It would under careless cultivation, but I do not think it would give as much difficulty perhaps as some of the fertile lands of the South.

Mr. ADAMSON. In this country a great many of the difficulties have been eradicated by cultivation; that is, the wild grass in the South disappears entirely under cultivation.

Mr. MANN. A good deal of this land has been under cultivation in banana groves, but practically they are disappearing now. When I was there last fall I discovered that there were quite a number of small bodies of ground leased from the government, where they were raising vegetables with great success, but in small quantities.

Mr. ROGERS. With regard to the banana situation, it is rather peculiar. The practice in the past seems to have been to take a piece of virgin soil and put it in bananas. The bananas will be produced in great abundance for the first two or three years, then the crop diminishes, until at the end of five years the banana plantation becomes of no value at all, and is allowed to grow up wild. The banana cultivator moves off to a new piece of land, so that practically all of the accessible wild land near the streams affording access to and from these plantations has been used up in that way. But in other parts of the Isthmus lands have been cultivated from year to year, and they have not had that difficulty.

The CHAIRMAN. How can they get back 3 or 4 miles from the canal without roads?

Mr. ROGERS. We are building roads. They have used the revenues of the Government now organized for the purpose of blazing trails. Those trails are generally about 20 feet wide, and they run out to the confines of the Canal Zone. There has been a good deal of work in that direction, and more is projected in order that access may be had to the lands lying back from the canal.

Mr. RICHARDSON. Do you not think, in view of the fact that the calculation has been made that we are going to build the canal within eight years, that a lease for twenty-five years is too long? You provide in the bill that in the event it becomes necessary for the Government to occupy or use any of the land already leased, that it may be taken back. Do you think, under those circumstances, that we had better lease the land for twenty-five years?

Mr. ROGERS. We have in view here not only the temporary benefit to the canal work in the opening up of this section of land on both sides of it for cultivation and grazing purposes, but we have in view the fact that the community itself ought to be developed with a view to the future. There will always be a large number of people there—Panamans—who will continue to live in the Canal Zone, and we can see no objection to developing the Canal Zone territory, as a community with a population that will be permanent.

Mr. ADAMSON. We have been trying to divert these considerations until we get the canal finished. We have desired to do nothing in the world but build the canal, and after that is done we can fix everything else.

Mr. ROGERS. But a plan of long leases combines both advantages. A man will take a tract of land and in two years place it in cultivation so that the Americans now at work on the canal may get the benefit until the canal is completed. After the canal is completed, then you have settled and developed a community.

Mr. ADAMSON. You are proposing here a part of a legislative scheme, while we have refused to take any action in regard to that up to this time.

The CHAIRMAN. Under the system of agriculture there, would not these lands be worthless at the end of twenty-five years?

Mr. ROGERS. They would be worthless if the agriculture practiced with respect to the banana lands were continued. But I think that if a general well-organized system of land development were put in vogue on the Isthmus that better agricultural practices would supervene as a consequence of that.

Mr. HUBBARD. Ought not the leases to reserve the power in the Government to compel the adoption of some such system?

Mr. ROGERS. It is pretty hard to specify in a lease exactly how a man shall cultivate his lands.

Mr. HUBBARD. Could you not reserve authority in some officer of the Government to regulate from time to time the method of cultivation?

Mr. ROGERS. We are inclined to think that that would be an irksome restriction to place upon the leases.

Mr. MANN. As I understand it, we do not desire to sell the land down there as, for some reason, we might want to use it, but that it is desirable, for the benefit of the people there, however, to have the land cultivated so that the crops raised may be had for consumption by our people on the ground. There is great complaint down there about the green vegetables and things of that sort, as they have to be shipped now mostly from New York or New Orleans. They can not get many people to cultivate this ground and prepare it for raising such products as we need there unless a longer lease than five years can be made. Of course, whether twenty-five years is right or not, I would not undertake to say.

Mr. ROGERS. It has been recommended that these leases be made in perpetuity, but I think twenty-five years would be better, because perpetuity would be practically a sale.

Mr. HUBBARD. Supposing after a lease is made that it becomes apparent that the land is needed for a town site, how do you, under this legislation, regain it?

Mr. ROGERS. We can regain possession of it for any purpose in connection with the construction of the canal by paying for the improvements.

Mr. HUBBARD. For a purpose in connection with the canal; but suppose you need it for a town site, how are you going to get it back?

Mr. MANN. That is an academic question, and if you go down there and look at the land—

Mr. HUBBARD. The bill itself contemplates that some of the lands are suitable for town sites, but if there was a change of opinion it

seems to me that they would be powerless under this legislation. If it is worth while to talk about it at the outset, why is it not worth while to continue to control it to the end?

Mr. MANN. There are certain places along the canal where there are town sites and will be town sites, and that land will not be leased; but as to the rest of the land, you can not put town sites off the line of the canal.

Mr. RICHARDSON. It would seem to me that there is a provision in the bill which covers the very difficulty that Mr. Hubbard mentions, because it says, "that it is not contemplated to use such lands in the work of canal construction or to set the same aside as a town site."

Mr. HUBBARD. That is under the lease as originally made.

Mr. RICHARDSON. And then it says:

And all leases shall be made subject to the provision that if at any time it shall become necessary notwithstanding for the United States to occupy or use any portion of the leased lands for the work of the canal construction, it shall have the right to do so without further compensation to the lessee than for the reasonable value of the necessary improvements made upon said tracts by the lessee.

It seems to me that it covers it entirely.

Mr. MANN. But the main question in connection with the bill is that involved in section 4.

Mr. HUBBARD. Allow me to ask one question there. What is the real objection to selling the land?

Mr. ROGERS. If Congress wants to extend to the Isthmus its general system of land laws, very well, but in view of their particular nature and tenor it has been thought best at present to confine our land policy to long leases, as we think the same advantage would be secured by long leases as by sale; and the more serious consideration of the disposition of the title to the lands could then be taken up later on its merits. I think that question might be passed until some formal territorial government or some form of organized government is established down there.

The CHAIRMAN. Why do you have the provision in section 5 that suggests dividing the land "by due north and south and east and west lines?"

Mr. ROGERS. The object of that is simply to authorize a land survey to be made dividing the Zone into sections so that the land may be described as is done in our country.

The CHAIRMAN. Would that correspond with the system in vogue there now?

Mr. ROGER. There is no such system in vogue there now.

Mr. MANN. There is no system in vogue.

Mr. ROGERS. No; nowhere in South America that I know of.

Mr. MANN. Excepting to describe it by metes and bounds.

Mr. ROGERS. But those descriptions are very inaccurate, very vague, and lead to litigation on account of their ambiguity.

The CHAIRMAN. But this makes no provision, as is made in all of our other land laws, for the variation of the magnetic needle. In this country we do not subdivide our lands by due north and south lines, and due east and west lines; we always make a variation allowance in the needle, and where I live it is about 13 degrees.

Mr. ADAMSON. That is on the theory that you have to allow for that variation in order to find the true north and south.

The CHAIRMAN. No; the true north line is the line that would lead to the North Pole. If you did not do that you could never have a perfect square.

Mr. MANN. Would it not be sufficient, so far as section 5 is concerned, to simply provide for a land survey to be made of the Canal Zone?

Mr. ROGERS. Dividing the sections into one kilometer square?

Mr. MANN. It might be convenient to divide it in that way. You have a territory only 10 miles wide?

Mr. ROGERS. I do not think it is necessary to give any more general authority, but I thought it would be an advantage if this section would indicate the purpose for which the land survey should be made. That is the purpose of sectionizing the Zone.

The CHAIRMAN. How much land is there in a kilometer square?

Mr. ROGERS. About three-fifths of a square mile.

Mr. MANN. A kilometer is three-quarters of a mile square.

Mr. ROGERS. About 1,100 yards.

Mr. ESCH. It is a thousand meters, and a meter is about 39 inches.

Mr. MANN. You propose to survey the land by kilometers, and divide it by hectares. They do not work together, do they?

Mr. ROGERS. Yes; hectares and kilometers are both part of the metric system.

Mr. CUSHMAN. Is one linear measure and the other square measure?

Mr. ROGERS. One is superficial measure and the other is linear.

Mr. MANN. Linear measure, or square measure, either one.

Mr. ROGERS. There has been no land sectionized that I know of under the metric system. It was thought perhaps that a section about a kilometer square would be better adapted to the general size of the Canal Zone, and perhaps to the relative small holdings of the settlers there, than a mile square, as in the United States.

The CHAIRMAN. We have a strip of land there 10 miles wide; it is not measured in kilometers, but measured by miles. Why not carry our own system down there?

Mr. ROGERS. All of the land transactions on the Isthmus for many years have been made under the metric system.

The CHAIRMAN. When we obtained the Louisiana purchase, all of the subdivisions were under another system than ours, but we at once adopted our own system, applied it to that territory, and, as we have done it in every instance, why make any exception here?

Mr. ROGERS. These lands have been occupied and purchased very largely by people familiar with the metric system, and the introduction of another system of measurement down there would be a little bit confusing.

The CHAIRMAN. Well, we are trying to introduce our language and all our customs, and, as well as we can, our methods of business.

Mr. KENNEDY. But the leasing would be done to people who understand nothing but the metric system?

Mr. ROGERS. Yes; and we could hardly educate them into our rather arbitrary system of measurement.

Mr. MANN. When we took possession, the canal was marked by indicating the number of kilometers. Those marks have been taken down, and everything now relates to the number of miles on the canal.

Mr. ROGERS. That is true; our engineers use the English measurements.

Mr. LOVERING. Have not all of those plans been redrawn under the English system?

Mr. ROGERS. Yes; I think they have been, and all our engineering calculations made on that basis.

Now as to section 4. The total area of the Canal Zone has been calculated to be 448.37 square miles. Of that amount, 52.11 square miles are owned by the United States by virtue of the transfer of title of the old French Canal Company. We have purchased since by private purchase or by condemnation 3 square miles, and there is held by the United States 188.91 square miles which are the public lands of the Zone. There is owned by the Panama Railroad Company, under its concession from the Republic of Colombia, 68.12 square miles, which leaves 136.32 square miles out of 448.37 square miles either owned or claimed to be owned by private individuals.

The CHAIRMAN. What is the character of the title of these claims, and what recognition do we give to their claims?

Mr. ROGERS. That is the point I was coming to. There is a very serious doubt in the minds of all lawyers who have studied this question whether any of these titles are valid against the Government of the United States. In my own investigations I have only been able to find one definite case where any tenant—and that for a small tract of land—was able to show a title running back to a grant or a judicial proceeding which placed the title of the land in a private individual. With respect to a section of land near Gorgona, it is claimed that there was a grant from the Crown of Spain about one hundred and twenty-five years ago, but we have searched the archives in Madrid, and so far as any exist, in Panama, and also at Bogota, but we find no record of it.

The CHAIRMAN. Was that made to one individual?

Mr. ROGERS. To four individuals, and it is simply a tradition—a rumor—and there seems to be no record of it; and it is a grant of *indultados*, which really is not a grant in fee of the land, even under the Spanish law.

The CHAIRMAN. What is the title of occupancy?

Mr. ROGERS. I was coming to that. The lands, so far as we have been able to discover, have simply been occupied by men who have squatted upon them. There has been for the last half century—I believe even further back than that—transfers of these colorable titles between individuals. There were some such transfers made down near Fort Chagres, or near the bay of Limon, which dated back to 1820. Along through the valley of the Chagres the first transfers seem to have been interchanged about 1840, and I rather inferred that many of the claims of title that were made to lands there were consequent upon the projected construction of the Panama Railroad across the Isthmus. The Panama Railroad was built between 1850 and 1860, and under an agreement with the Republic of Colombia it received alternate sections of land across the Isthmus. At the same time the Government entered into an arrangement whereby it withdrew from private occupancy all of these lands in the Canal Zone, and subsequently, about 1860—

The CHAIRMAN. Did these squatters or these holders, under these various transfers, acquiesce in that—in being dispossessed by the Government?

Mr. ROGERS. They were not dispossessed by the Government. It was simply a legislative statement that no grant should be made to any public land within this section of the country that lay on either side of the railroad for some distance.

The CHAIRMAN. Is there any reservation because of antecedent sales or transfers?

Mr. ROGERS. No, nothing of that sort; just a general agreement that the Government would not make a grant of land except to the railroad company. Later on, when the project for the construction of the canal was first put on foot, about 1867 or 1868, there was another act of the legislature there which specifically declared all these lands to be public lands, that is, land for public use, and therefore withdrawn from settlement or occupation. However, many of these estates were Spanish estates, and are known by names. They had been settled upon, though there had been very little cultivation, and there had been deeds by which these estates were transferred from one to another, and subdivided in many cases. A good many of these deeds were unquestionably manufactured. They had a method, it seems, of manufacturing title by what they called an auction sale, where they collusively got up a suit and had a sale, and as a result of that attempted to create a title.

The CHAIRMAN. About what was the date of this practice?

Mr. ROGERS. The practice has prevailed always; quite recently.

Mr. HUBBARD. Do they come into possession under that kind of title?

Mr. ROGERS. Yes; but there has been very little cultivation of any sort. A man would settle upon the banks of the Chagres River and claim back 3 leagues from the river on both sides; but of course he would not occupy that; much of it would remain wild land.

Mr. HUBBARD. Did not even graze it?

Mr. ROGERS. In some cases he would raise a patch here and there, as, for example, a banana plantation. The poorer classes would go into these estates and build huts and become subsquatters and claim rights. Along in 1862, at the time the Panama Railroad was trying to get an adjustment of its grant from the Republic of Colombia, there was a decree passed in Panama in which everyone who claimed title to any lands along the line of the Panama Railroad, then constructed, was requested to come in and submit the deeds to two surveyors. The surveyor on the part of the Panama Railroad was named Harrison, and that on the part of the Colombian Government was named Arosemena. The deeds were simply presented to these surveyors, and upon the naked claims made by the face of the deeds they drew up this map [indicating], which is sometimes referred to as the official map and which shows the estates in the Chagres Valley in 1862 that were claimed by title of private ownership. All of the white lands upon the map indicate public lands, and the rest of the lands are these different estates.

(Explains map to members of the committee.)

Mr. HUBBARD. Were the proceedings under that map supposed to relate merely to boundaries, or in any way to effect title?

Mr. ROGERS. They were not supposed to affect title. It is simply a pictorial representation of the land claims presented. They did not propose to pass upon the validity of the claims. A man would come in, show his deed, and claim under that deed to have land

lying on both of the banks of the River Chagres, running back a distance of 3 leagues, and along the river a distance of 2 leagues. They simply plotted that out on the map.

Mr. RICHARDSON. Was there any rule regarding length of occupancy that would give a man title?

Mr. ROGERS. That is one of the disputed legal questions. The best advice I have been able to get, and my own conviction is, that no occupancy, however long, will create a title which is valid against the Government of the United States.

Mr. HUBBARD. Under their system of laws could, in any instance, a title be made in the absence of the grant?

Mr. ROGERS. My own conviction is that no title can hold against a sovereign by prescription for any length of time, either the Government of Spain, the Republic of Panama, or the Republic of Colombia. Under the old Spanish law, in the *Sietas Partidas*, for instance, the fundamental law of all Spanish countries, it is stated that prescriptions do not run against the lands for public use. There are certain sections of the Colombian code which also state that prescription does not run against property for public use, so our best judgment is that these titles are not valid.

Mr. MANN. Do you mean that as to the title to all lands marked in colors on this map?

Mr. ROGERS. Yes; practically all, but there has been no judicial determination of that question upon the Zone. The question is in the courts now, and it will be decided shortly. But even if that position should be sustained—that is to say, the position that these titles are not valid as against the Government—there is this right which these occupants have under the Spanish law and which I think is binding upon the American Government; that they should be compensated where they are tenants in good faith for the value of their improvements and habitations, irrespective of the question of title. In many cases the value of the improvements may be more than the value of the land, while in other cases it may be less.

Now, according to my figures, there are 10,007 hectares of those lands claimed by private individuals which will be overflowed, or which we will have to take for other purposes of either railroad or canal construction. I have here a map which shows the present Lake Gatun plotted upon the Arosemena map—that is, showing where the lake will run. The lines in yellow are lands owned by the railroad company. The lands within the red lines are lands which we have acquired either through the old French canal company or since by private purchase. Among these estates is the estate of Gatun, marked 8. I acquired that myself. That land had been held at \$50,000 gold, and I subsequently bought it at \$8,000 gold, including the site of the village of Gatun. We simply took a quitclaim deed to the land. The other lands in green are the *Tierras Baldias*, or public lands, or lands which no one has ever made any claim to. The lands in purple are lands at the present time claimed by private individuals. From Gorgona to the Pacific Ocean we either own the lands or they are not needed.

The land question is largely confined to the question of titles in the Chagres Valley and largely to the lands shown upon the Harrison-Arosemena map of 1862, as having been claimed by private individuals.

Mr. MANN. That is land overflowed by the Chagres River?

Mr. ROGERS. Yes. Outside of that only a few little pieces of land now in process of adjustment are needed for the relocation of the railroad or down in the neighborhood of La Boca.

Now, this bill authorizes the President in certain cases to adjust these land titles by recognizing some titles as valid. The consideration of the recognition of the validity of the title by the President will be that they will surrender, without any further payment, to the Government such portion of the lands as will be overflowed by Lake Gatun. It will, however, happen that in many cases practically the whole estate will be overflowed, and in other cases only a frontage will be taken off the estate. I have suggested to some of those gentlemen there that the best possible disposition of this question would be, if the United States would recognize their strong equities—they having occupied the land for many years—to get authority from Congress, if possible, to enable us to recognize their title in some of these lands and to add to their estates out of the adjacent public domain such portion as would be taken for the uses of the Canal or overflowed by water.

Mr. HUBBARD. Section 4, page 3, line 9, speaks not only of the lands surrendered to the Commission, but lands taken by them. What is the nature of the word "taken" contemplated by that phrase?

Mr. ROGERS. "Taken" is an expression which would include overflowed lands by water.

Mr. HUBBARD. It does not relate, then, to any proceeding under existing law, or which would be inferred from this enactment by way of appropriation or condemnation?

Mr. ROGERS. No.

Mr. HUBBARD. Simply the physical taking?

Mr. ROGERS. The physical taking of the land. The land actually to be used up, you might say, in the construction of the canal. In that connection, that would lead to this further advantage: You can see from the map that there is a large section, perhaps the most fertile section in that country, which can not be developed on account of the cloud in the title. If you went there as an immigrant, and wanted to acquire a section of that land, you would be met with the proposition that the claimant of the land had no authority to confer title, and that at some future day the land laws of the United States might be extended to the Canal Zone, and that some third party might get some kind of a patent and go in and contest, and contest successfully, your title.

Mr. MANN. Primarily what you want is authority to exchange lands outside of the limits of Gatun Lake when necessary, and take instead the lands that are claimed by private owners, when necessary to take lands inside the limits that are claimed by private owners.

Mr. ROGERS. Yes, move them back in many cases.

Mr. HUBBARD. But this clause confers either the right to take, or recognize as existing the right—

Mr. ROGERS. There is no question as to the absolute right to take it.

Mr. HUBBARD. Without any proceedings for that particular purpose?

Mr. MANN. The treaty provides for the appointment of a commission to determine the values of the land.

Mr. HUBBARD. So it would at least be a semijudicial proceeding.

Mr. RICHARDSON. Is there anything pending in the courts now?

Mr. ROGERS. We have a case pending at this time which ought to be a test case.

The CHAIRMAN. You go on and recognize these titles—that is, certain particular ones—and after you do that how can you avoid, then, in fairness, a recognition of the title of all of these claimants to the 138 square miles?

Mr. ROGERS. It is a compromise. Here is a disputed question of title. We claim that the title is really in the Government, and they claim that they have occupied it for forty years; therefore they have strong equities, and they say: "In order to get our title settled and adjusted we will give you the right of way and take from adjacent lands such portion as we have lost, you to confirm our title to those lands."

The CHAIRMAN. But here comes another man later on with similar equities.

Mr. KENNEDY. Then give him the same compromise.

The CHAIRMAN. Will that not be regarded as compelling a magnanimous Government to recognize the status, and will not the safer course be to assume that we are the owners of that soil and proceed upon that hypothesis, limiting their claims simply to the value of their improvements?

Mr. ROGERS. That is the course we would have to pursue if this bill does not become effective, but I was trying to point out the advantage of recognition. In the first place, I think that these landowners have strong equities there, because it is the universal practice in South American countries to acquire land title by mere occupation.

The CHAIRMAN. But they have no claim of that kind in law; they are mere squatters occupying a very inconsiderable part of the large grant that they claim, so that that equity is not very strong. They have made no improvements to speak of, and they have not entitled themselves by those improvements to any considerable amount of sympathy; therefore it would seem to my mind that the true course for the Government was to refuse outright to recognize any of those titles excepting those that you see the law clearly gives them, the right to compensation for their improvements.

Mr. MANN. Of course, after all, the question is a matter of dollars and cents.

The CHAIRMAN. No, it is not a question of dollars and cents just now, but it is a question of the future settlement of this country. I am looking forward to the time when that zone will be very largely populated by American citizens, and I for one do not want to do anything that is going to jeopardize our right to go in there and possess that soil and dispose of it as the Government sees fit.

Mr. MANN. The bulk of these lands that are in dispute will be in Gatun Lake—that is, the bulk of the valuable land claimed by the private people is within the limits of the proposed Lake of Gatun.

Mr. ROGERS. Every one of those estates touches upon it.

The CHAIRMAN. But I do not think that changes the situation at all. We will go right on and flood that land.

Mr. MANN. But here is the point; if we do that, and after the lands are flooded we have to pay for the improvements and property, you know what that always means, we pay very high prices for it.

The CHAIRMAN. I think this bill ought to authorize the recognition of their legal rights, the recognition of their rights to improve, and settle that question now.

Mr. MANN. We offer to exchange some other lands we have for those lands and improvements which we take away from them.

Mr. HUBBARD. Wouldn't all views be met by the passage of a bill permitting the President to make a grant of land in chief for making such terms as individually might be thought right? That could be done without recognition of the other titles.

The CHAIRMAN. There is another proposition there. There is a statutory recognition, as I understand Mr. Rogers, of their right of recovery for improvements which, to my mind, excludes any right of the Government to recognize any right in the soil.

Mr. ROGERS. No; perhaps you misunderstood me. I said that it was a general principle of Spanish law that any squatter is entitled to the improvements if he has been an occupant in good faith. Therefore, these people here are entitled in many instances to the value of their improvements as occupants of the land irrespective of the title.

The CHAIRMAN. Then it is the common law of the land?

Mr. ROGERS. It is the statutory law.

The CHAIRMAN. I think that ought to be recognized.

Mr. ROGERS. I quite agree with you, but I think you have perhaps stated the position of the United States in regard to this matter stronger than it is entitled to be stated. These people have a very much stronger equity in these lands than a mere squatter in this country would have, for possessory title down there has a higher dignity than possessory title would have up here, because, as I stated, for many years it has been the recognized practice to acquire a valid title to land by occupation. The old laws distinctly stated that title to public lands may be acquired by occupation, provided the title was subsequently perfected by judicial proceedings.

The CHAIRMAN. I understood you to say that there were no prescriptive rights recognized by the Government.

Mr. ROGERS. That is quite correct, but occupation gave a potential right to have a possessory title perfected into legal title.

Mr. HUBBARD. That is, it gave you the right to have it equivalent to a grant?

Mr. ROGERS. Yes; in other words, if they made improvements, put up banana plantations here and there, they had a right superior to that of any other man who could come in. If they then proceeded to have the title adjudicated, the court, upon these claims being presented, would decree a grant or deed to be made to the first occupant of the land.

Mr. HUBBARD. That is, as a matter of right?

Mr. ROGERS. Yes.

Mr. KENNEDY. His right is only to the exclusion of other individuals; it is not a right against the sovereign power until perfected.

Mr. ROGERS. No; but it was a right against the Government to this extent, that after a man had settled upon the land, and occupied it in that way, he was entitled by judicial proceedings to proceed to perfect the title.

The CHAIRMAN. Do you say there is a right of prescription recognized in that country against the Government?

Mr. ROGERS. I was trying to state that as a general principle of law relating to the Canal Zone since 1867, and by express enactment that right is held not to apply here; and prior to that time, unless this potential right from occupancy had been perfected into a valid

title by adjudication, the occupant did not have valid title against the Government; that is to say, prescription did not run unless the settlement or occupation subsequently became perfected by later proceedings.

Mr. HUBBARD. Were those proceedings taken in regard to any of these lands?

Mr. ROGERS. No. The Spanish lawyers upon the Isthmus representing some of these claimants dispute this proposition of law that I have advanced, but the ablest Spanish lawyer upon the Isthmus I have known, and who has been our own legal adviser, has always been strongly of the opinion that the prescription did not run. I have taken the trouble to go through the statutes, and it seems to me clear that as a legal proposition prescription does not run against the Government with respect to these lands under either the old Spanish law or the Colombian code which was in force.

The CHAIRMAN. We have had some expensive experiences with regard to these Spanish grants, and I suppose the Government has been robbed of many thousands of square miles through fraudulent claims in California, New Mexico, and Arizona. I have read of some where they absolutely changed the geography, changed the names of mountains and of rivers, in order to accomplish the larceny of great tracts of land. Now, I do not think it is a wise policy on the part of the Government to recognize any right of that kind before there has been an opportunity for a correct adjustment. We should certainly study the legal situation before we recognize any of those titles.

Mr. ROGERS. The bill does not recognize any of those titles; it simply places it within the President's power to go to such extent as the exigencies of the case point to as proper.

Mr. HUBBARD. Would not the recognition of a claim of a certain sort in a given case operate as a possible recognition of the claims? Suppose a settlement is made by the President, by recognition as you propose, of a claim of a particular settler; may not that be interpreted to operate as a recognition of like claims of other settlers with whom no arrangement is contemplated?

Mr. ROGERS. No; not under the terms of this act.

Mr. HUBBARD. But by inference?

Mr. ROGERS. No; he is authorized to convey "such portion of said public lands as may in his judgment properly compensate such claimants or occupants for lands claimed by them and taken by or surrendered to the use of the Isthmian Canal Commission for the purpose of canal construction; and he shall also be authorized, for the purpose of effecting a settlement of right-of-way claims along the line of the canal, to conform to such claimants or occupants title to their lands to such an extent as may seem to him advisable."

Mr. HUBBARD. Compensation for a claim implies recognition of a claim, and other like claims are set up by other landholders with whom the President has no occasion to deal, but having recognized the claim of that sort of a case with which he is dealing, may there not be inferred from that a recognition of the same force of a like claim made for other lands?

Mr. ROGERS. I do not think so. Where it is the result of compromise, I do not see that the act of taking one case will establish a rule which will be binding in another.

Mr. ADAMSON. Your purpose does not really extend beyond the authority to compromise these particular cases, but would you not get at it in a safer and better way by permitting him to grant certain lands to certain persons on such terms as he may see fit?

Mr. ROGERS. I am perfectly willing to accept the suggestion, and incorporate the words, that he shall be able to authorize a grant to such persons of such portion—

Mr. ADAMSON. On such terms as he may see fit. That would enable you to reach the same conclusion without unnecessarily declaring a new legislative policy; and would it not be a better way to do it?

Mr. ROGERS. I think the suggestion is a good one. I recommend, therefore, that the last paragraph be changed so that the President shall be authorized to grant such lands as he may think advisable.

Mr. ESCH. Are there enough of those public lands to make good the claims of these people claiming lands with colorable title?

Mr. ROGERS. This proposition appeals to most of the intelligent people there, because instead of their property, as now, having a frontage along the Chagres River, it will lie upon high ground, so what is now inaccessible land back from the Chagres River after Lake Gatun is completed will be wholesome lands, lying on the margin of the lake, and some of it much more valuable than the present frontage on the Chagres River. That is the reason why some of these people would like to have it.

Mr. HUBBARD. I would like to ask whether the litigation over this prescription has so far progressed that briefs on this question are in print?

Mr. ROGERS. No; briefs are not in print. Doctor Galindo, who is a Spanish lawyer of a great deal of ability, has made a careful and long study of this question, and has always been of the view that the prescription did not run. A case will be decided down there shortly which will settle the question.

Adjourned at 12 o'clock noon to meet again at 2 o'clock p. m.

AFTERNOON SESSION.

The committee reassembled at 2 o'clock p. m.

Present: Honorables Irving P. Wanger (acting chairman), William C. Lovering, John J. Esch, and William C. Adamson.

STATEMENT OF MR. RICHARD R. ROGERS, GENERAL COUNSEL OF THE ISTHMIAN CANAL COMMISSION—Resumed.

The CHAIRMAN. Mr. Rogers, you may proceed.

Mr. ROGERS. Mr. Chairman, the only further observation that I will make about this bill, in the latter aspect of it which we have been discussing, is that I think if the President had power to in certain cases settle the titles to these disputed lands, it would tend very much to the immediate development of the agricultural resources of the Zone, because with respect to all of this land shown upon the Harrison-Arosemena map it will be very difficult to get anyone to purchase the land and almost impossible for the proprietors, or alleged proprietors, to subdivide them without a clearing up of the titles. The bill would

possibly also enable us to get the right of way cleared up at a minimum cost.

I have here an amendment suggested to section 4, in view of the point raised by Mr. Hubbard. I do not know whether it will be proper to state that or not, but the suggestion I was going to make was, in line 13, on page 3 of the printed bill, to change the word "conform" to "convey;" and in line 14, before the word "lands," to strike out "their;" and after the word "land," to insert the words "claimed or occupied by them," so that that portion of the bill would read, "and he shall also be authorized, for the purpose of effecting a settlement of right-of-way claims along the line of the canal, to convey to such claimants or occupants title to the lands claimed or occupied by them to such an extent as may seem to him advisable."

Now, it has also been suggested to me that instead of paragraph 4 a general provision simply authorizing the President to make deeds in such cases as may be necessary to adjust the right of way for the railroad and canal would be preferable. I can see no objection to that. It confers upon the President a larger authority with respect to the lands than we had asked for of him. I have written out this form of suggestion for that paragraph to Mr. Adamson's observation—that is, to insert the following in lieu of section 4:

For the purpose of adjusting claims for lands occupied or necessary to be occupied by the canal and the Panama Railroad and appurtenant works the President is authorized to convey title to such portions of the public lands in the Canal Zone as to him may be deemed advisable.

— I will say that if the bill should pass in the form last read, that that section would only be applied in the manner set forth in section 4 as it stands—that is to say, he would only use the power conferred upon him to convey title in order to settle disputed claims to the lands that are shown on the Harrison-Arosemena map.

The CHAIRMAN. Will you not please read that again?

Mr. ROGERS (reading):

For the purpose of adjusting claims for lands occupied or necessary to be occupied by the canal and the Panama Railroad and appurtenant works the President is authorized to convey title to such portions of the public lands in the Canal Zone as to him may be deemed advisable.

Mr. ESCH. Is that broad enough to cover reservoir and water systems and pipe lines and such other adjuncts? You say "occupied by the canal and the Panama Railroad."

Mr. WANGER. You might say "the construction of the Panama Canal and the works."

Mr. ROGERS. Yes; you might say "accessory works," or something of that kind. What was your suggestion, Mr. Wanger?

Mr. WANGER. And appurtenant works.

Mr. ROGERS. Yes, and appurtenant works.

Mr. ADAMSON. That is a Blackstonian word.

Mr. WANGER. I think that would be much better than section 4 as it now stands.

Mr. ROGERS. That would be entirely satisfactory.

The CHAIRMAN. Can you not give us some idea of the present value of those lands that would probably be taken?

Mr. ROGERS. I will state in regard to that, Mr. Chairman, that the problem of fixing the market value of these lands has been one of the

most difficult problems that I have ever been confronted with. I had to deal with that question directly last spring when we assembled on the Isthmus of Panama the joint commission authorized under the treaty for the purpose of assessing certain land-damage claims. There have been for many years comparatively no transfers of private lands within the Canal Zone—only a few in the vicinity of Panama. There was no expert evidence available there as to the market value of the lands at all; there were no real-estate agents on the Isthmus, and no people who made it a duty of studying land values. Our evidence in those cases consisted of deeds to the French canal company, showing the prices at which they had purchased the land, and also certain deeds between private individuals, showing the prices at which they had purchased the land, and sundry judicial appraisements that had been made on the occasion of the death of a landowner and the division of his estate, and certain assessments made for the purpose of taxation. The highest price that has ever been paid on the Isthmus for any agricultural land, as such, was about \$20 silver per hectare, in 1882. That was about \$17 gold, approximately, per hectare, and consequently about \$7.50 per acre gold. In many cases those were the prices paid by the French. It was admitted that the French paid more than the land was worth; where there have been transfers between individuals the consideration was very much less. I myself, as I have stated here, not long since purchased about 1,700 acres of land from General Corcoso, at Gatun, including practically two-thirds of the village line of Gatun. Gatun, you will recall, is the little village right on the island in the Chagres River, where the dam is now being constructed. I purchased that for \$8,000 gold.

Mr. ESCH. Quitclaim?

Mr. ROGERS. We took a quitclaim for it; yes, sir. That is a fairly high price, but that was the land most needed for the immediate use of the canal.

Now, the joint commission which assembled there was utterly unable to agree upon land values in any case where a resident of the Canal Zone was interested. They did agree in condemning the property of the Pacific Mail Steamship Company, or its one-half interest in the islands of Naos, Flamenco, and Perico, but whenever a question was presented to them where a native landowner was on the other side they could not agree at all.

The CHAIRMAN. What was the valuation placed upon those three islands?

Mr. ROGERS. About \$20,000, including the improvements, for one-half interest of the Pacific Mail Steamship Company in those three islands, and their improvements on the islands, those improvements consisting of repair shops, sea walls, piers, and buildings. But to illustrate how wide apart the American and the Panaman commissioners were in some cases: Where the American commissioners, looking at the evidence in the light of actual transfer of property, were willing to pay as much as \$20 gold per hectare, the Panaman members would want to give \$2,000 gold per hectare, and in their final written report were only willing to come down to \$500 gold per hectare, thus rendering an agreement practically impossible, and it has been this attitude down there which has prevented the amicable adjustment of a good many of those estates.

Mr. ESCH. Did the French have any such troubles, or did they not attempt to get a fee?

Mr. ROGERS. The French paid what was at that time considered an exorbitant price for land. Wherever they got into the courts there they had to pay the most exorbitant sums. For example, they paid more than \$40,000 for running a road through one strip of land near Panama when it actually enhanced the value of the land; it was nothing but a wagon road.

Mr. ESCH. Then all the lands that we got from the French company we hold without question of title?

Mr. ROGERS. Without any question. Where the French did trade for the lands they usually paid about 20 pesos per hectare—that is, \$20 silver per hectare.

Mr. WANGER. Is there an office established there for the recording of deeds?

Mr. ROGERS. There is now; there was not until last spring. The President then put into effect an Executive order making the circuit clerks registrars of land titles, and transfers of lands can now be registered as in this country in the circuit clerk's office.

Mr. WANGER. What was the Colombian method of preserving records?

Mr. ROGERS. They had no records, and have not to-day, except this: When a deed of land was to be made the parties would draw up a memorandum of sale and go before a notary public and the notary public would then inscribe upon his record a deed or a writing which transferred the title to the property. That became the original deed of record. Then one of the interested parties could take from the notary's books a copy of that. That system has been of very little service, as far as the lands in the Canal Zone are concerned, because either there were no notaries or else no record was kept of their deeds.

Mr. WANGER. Did that book become a public record or was it the private property of the notary?

Mr. ROGERS. It is a public record.

Mr. WANGER. And he turned it over to his successor?

Mr. ROGERS. Yes, sir; he turned it over to his successor.

Mr. ESCH. Will Matachin be under Lake Gatun?

Mr. ROGERS. The water will take in a portion of Matachin.

Mr. ESCH. Will not some villages to be taken over be entirely occupied?

Mr. ROGERS. Most all of Gorgona will be taken up.

Mr. ESCH. That raises this other question, if you readjust these lands and, for instance, try to give new lands therefor, how will you treat the owners of those little village lots in the new distribution?

Mr. ROGERS. Well, we have already solved that where individuals have built small houses upon the lands which are admitted to be either public lands or the property of the railroad company, by offering them an easement in land elsewhere and compensating them for the cost of removing their dwelling to the new site, and we will do that with respect to all of those people. Sometimes we give them a commutation in money for the value of their improvements.

Mr. ESCH. Of course the railroad will have to be changed to conform with the lake, and new villages will probably be built along the line of the road.

Mr. ROGERS. There have been several new villages relocated there already; they have all been relocated upon that principle. They lay out a town site on the public lands somewhere, generally up on the hillside, and then they go to the people occupying a village site that has to be taken for the purpose of canal construction and offer them a site in the new location, and then give them \$100 or \$200 for the purpose of moving their houses or building a new house. They generally prefer to take the money and do it themselves, or if they desire it will sometimes be done by the railroad or by the Commission.

Mr. ESCH. Would this law, if passed, give the Government power with reference to the cutting of timber within the Zone?

Mr. ROGERS. It would as to such tracts of land as were conveyed under this law. There is no timber in the Zone that is of very much value for lumber purposes; it is only of value for firewood.

Mr. ESCH. Mahogany is all cut out, I understand?

Mr. ROGERS. Practically all. The forests of the Zone are of no value to speak of. There are some trees of value at one place or another. There are some minerals in the Zone or thought to be. It is claimed that there is coal there, and I understand that there is oil there.

Mr. ESCH. You have a provision in the bill for that?

Mr. ROGERS. Yes, sir.

Mr. WANGER. I think it is also claimed that there is gold there.

Mr. ROGERS. Yes, sir; there is gold there. As a matter of fact, there is gold in practically all of that Central American and South American country. The records show that there is gold there, even around Panama. There have been several placer claims in the vicinity of the Canal Zone—I am not sure whether within the territorial limits of the Canal Zone. There have been several placer claims worked since the Americans have been in there.

Mr. WANGER. What do you think of the necessity and advisability of a law which would declare that all conveyances and muniments of title should be recorded in such a period of time or that otherwise they should not be available.

Mr. ROGERS. This order of the President that I spoke of authorized that to be done in part. But in the majority of cases it would be impossible for land claimants to do that. In fact, there are practically no original deeds to any of this land down there, such titles as they have being copies made of deeds that have been registered by notaries, or they are made up from affidavits or statements of one sort or another. It is very irregular, and I believe if you should pass a law which required a man to record his titles within a certain definite time—I mean by that a record of title which had at least some validity on its face—that you would practically do away with the title question altogether, because no such titles could be recorded; none are in existence. All conveyances of real estate upon the Isthmus now, under this order, are required to be recorded in order that they may be notice to subsequent purchasers and creditors, and all muniments of title which are in existence of a Spanish nature can be recorded, but, of course, recording them does not give them a validity that they would not otherwise have. It is simply for the purpose of preservation. We have a law down there—a new code of civil procedure—giving a method of testing these land titles by litigation. We have no difficulty in regard to a trial of these cases by

judicial methods. You can do it there as well as you could in this country.

The only object of this bill is this, to confer authority; inasmuch as this is public land of the United States it can not be alienated except by an act of Congress or by virtue of the authority conferred by Congress.

Mr. ESCH. Have the limits of the zone been permanently marked by monuments as yet?

Mr. ROGERS. Yes; they have been monumented; they are monumented now; but of course the zone includes not only the 10-mile strip, but under the terms of the treaty it includes lands lying outside of the 10-mile strip which will be occupied by the canal. Now, this lake is going to run many miles outside of the canal in certain directions.

Mr. ESCH. Would this system of recording titles by us within the zone have any tendency to induce the Panamanians to copy or adopt it?

Mr. ROGERS. I think not; they are very tenacious of their customs, legal and otherwise.

SENATE RESOLUTION NO. 40, RELATING TO TRANSPORTATION OF
CANAL SUPPLIES.

Mr. WANGER. Have you a copy of Senate resolution No. 40?

Mr. ROGERS. Yes, sir.

Mr. WANGER. Will you kindly favor the committee with your views as to that resolution?

Mr. ROGERS. I will state certain facts with respect to that resolution to the committee. I desire to say at the outset, however, that with respect to the political aspect of this bill, as counsel for the Commission I have nothing whatsoever to say. That is a matter that ought to be settled by Congress, and that is the attitude of the chairman of the Commission, and in fact of the entire Commission. Whatever policy is adopted by Congress with reference to transportation of supplies in American ships will of course be faithfully followed out.

Looking at the resolution simply from a practical point of view in its bearings upon the operations upon the Commission, there are three facts that perhaps should be stated. Most of those are contained in some correspondence that took place between Col. George W. Goethals and the Secretary of War, and also in a letter that he wrote, I believe, to Mr. Loeb. Copies of that correspondence, I believe, are in the possession of some of the members of the committee, and the views that are set forth in those letters are my own views; at least I concur in those views. Now, if this bill becomes a law, it is proper to say that it will add to the cost of the construction of the canal by an amount which would represent the additional cost of transporting the cement and coal and all other coarse supplies to the Isthmus in American bottoms. We can only make an approximation of what that cost would be. Colonel Goethals thought it might be conservatively placed at about \$4,000,000.

Mr. LOVERING. That is additional cost?

Mr. ROGERS. Yes, sir; additional cost to the Commission in constructing this canal if this bill is passed. That, in a general way, is

an approximate estimate. It would cost about 75 cents per ton more to convey rough freight to the Isthmus in American bottoms than it would in foreign bottoms.

Mr. WANGER. Is that on the assumption of conveying it all in American bottoms?

Mr. ROGERS. All in American bottoms. Heretofore we have received some bids at different times to convey stuff to the Isthmus in American ships, but very infrequently. I think of one case that we had in mind where the difference was over a dollar a ton; that was with regard to a supply of coal to the Isthmus; at least it was stated to me one day in New York over a year ago, by a gentleman who was interested in some American ships, that the additional cost would necessarily be about \$1 a ton more, and I think his figures were \$1.15 more. So I say that whatever that difference is will be added to the cost of the canal, and we have estimated that at about \$4,000,000.

Now, the next point which has occurred to us in that connection, and which was set forth in this correspondence that I have alluded to, is the restriction that it places upon the facilities of the Commission for carrying on this business. We estimate that for the purpose of conveying to the Isthmus all of the material that will be required from 15 to 20 ships of about 5,000 net tons will be required. The only ships that are practically available for the coal supply and for the cement supply are steamers. That is because both coal and cement must reach the Isthmus in a constant uninterrupted stream, and we ought to be able to calculate with a reasonable degree of certainty upon the time when those supplies will arrive. Inasmuch as we do not wish at any time to reduce the stock of coal or cement on hand, or to increase the stock of coal and cement on hand above a certain figure, it is necessary for the coal and cement to arrive regularly and be on hand in sufficient quantities to carry on the work at all times. If we should run short of either one of those very essential materials it would result probably in the temporary disorganization of the work. For that reason the Commission advertises always for the transportation of material of that sort in steamers. They are not willing to risk the uncertainties of transportation by sailing vessels.

Now, whether there are from 15 to 20 American vessels of that size available, I do not know. The only information I have upon that subject is contained in a list of vessels that was filed by Senator Frye when this bill was under discussion in the Senate, and from that list I notice only four vessels of more than 5,000 net tons. Quite a number of other vessels are given in the list, but they are vessels generally of from 2,000 to 3,000 net tons. It is possible that you might be able to get enough American ships at one time to convey a certain portion of this freight. I have understood that there were gentlemen who were prepared to furnish ships and transportation, for example, of the cement to the Isthmus, but whether there would be enough ships to transport the cement and coal as well I do not know; but certainly the supply is not unlimited, and if contracts were made for the transportation of coal and cement in American ships alone, any interruption in the supply of the ships, the breaking down of a ship, or the necessity of increasing the supply to twice the quantity—as we had to do last autumn with respect to coal—would place us

perhaps in an embarrassing position. Under those circumstances it would seem that the tramp steamers of the world ought to be open to the requirements of the Commission, so that they could get them at all times. There are no American tramps, broadly speaking, at all; there are some American ships that have been used for various purposes on regular lines which might be withdrawn or which might be spared from regular shipping organizations, but there is not that wide, broad field that is furnished by the freighters of the nations of the world thrown together.

That was the second point that was brought up. There is one other point that is especially pointed out by the purchasing officer of the Commission at the present time, and that is the difficulty of getting bids under an arrangement which requires the articles furnished to be transported to the Isthmus in American bottoms. To illustrate, a man in St. Louis might bid upon a certain quantity of car wheels, or a man out West, perhaps, on a certain amount of lumber, and it would be very difficult for him to state whether he would not be able to transport that by Gulf ports in American ships. A proviso was put in the resolution in the Senate to the effect—

That this resolution shall not apply to any port of the United States between which and the Isthmus of Panama there is no vessel owned by the United States, nor by the Panama Railroad Company, nor vessel of the United States, available at any such port when needed and adequate to carry the commerce offered between such port and the Isthmus of Panama

Now, the difficulty in that connection is this, that a supply man bidding to furnish material to the Isthmus would not be able to state in advance whether American ships would be available or not, and he would hardly be able to bid the supply "c. i. f. Colon," as we are purchasing our materials at the present time, on account of that uncertainty. For example, he might assume to ship by New Orleans and the American Fruit Line, and he might act upon the assumption that at the present time there are no American ships sailing from New Orleans to the Isthmus, and, therefore, under the clause quoted he would be justified in shipping by the Fruit Line, which is the only established line between New Orleans and the Isthmus. It might happen, though, that after he had gotten the contract an American ship would be available, or the reverse of that situation might occur; he might think there might be American ships available and there might not be. I have not worked out that phase of the case very much, but that is the objection that has been stated to me by our general purchasing officer to that portion of the bill.

Mr. WANGER. The resolution provides for bids being submitted for delivery at the option of the bidder.

Mr. ROGERS. The resolution, as it is now drawn, is not entirely clear to me. That second section was put in when it was in the Senate by amendment and the alternative provisions are copied from our last invitation for the furnishing of cement—at least, they are the same as the alternative proposition contained in that invitation. If by that second section it is meant that shippers can offer to furnish supplies in ships of foreign register, I do not know how far the President will be authorized to accept such bid. In other words, that second section does not seem to me to be entirely consistent with the first section. I would not be sure what the President's

duty was under those circumstances, whether the last section was intended to release the obligation to ship in American ships, as contained in the first section, or not. But if there are ambiguities in that regard doubtless they could be cleared up. I do not think that would be a material objection.

Mr. WANGER. The second section provides that the bids shall be submitted for the delivery of the articles "first on docks within reach of the ship's tackle at seaports of the United States named by the bidder." That, of course, imposes no responsibility upon the transportation from those ports.

Mr. ROGERS. You will notice that the first section states that transportation by sea is restricted to American vessels or vessels of the United States. Then the second section authorizes—

Mr. LOVERING. "Unless the President shall in any case deem the bids or tenders therefor to be extortionate or unreasonable."

Mr. ROGERS. Of course I mean with that proviso. Then the second section authorizes the bidder to bid in the alternative to ship in ships of American register or in ships of foreign register. Now, availing himself of that alternative, suppose he bids to ship or send his supplies down in ships of foreign register. I suppose that second section then becomes subject to the general provisions of section 1, and that his bid can only be accepted in event that all other bids to send in ships of American register were deemed extortionate. You might take that view of it, or you might take the view that to a certain extent section 2 cancels the requirements contained in section 1. But, as I say, that is an ambiguity that would yield either to construction, if it exists, or it might be rectified by certain changes in the bill now.

Mr. WANGER. What do you understand by the words in line 1, page 3, "On docks, at the option of the bidder;" to what do those words relate?

Mr. ROGERS. They mean that the bidder can agree to furnish supplies at La Boca or Colon either in ships of the United States or in foreign ships, and he names a price per unit, based upon transportation by the one method or the other.

Mr. ADAMSON. At either place?

Mr. ROGERS. Of course if he was a Pacific coast shipper he would ship to La Boca and if he was an Atlantic coast shipper he would ship to Colon.

Mr. ADAMSON. The same bid would be open to both coasts, would it?

Mr. ROGERS. Yes, sir; of course they always are. At the present time all of our materials practically are purchased delivered upon the Isthmus and final inspection is made upon the Isthmus. We accept the things there. The shipper gets them down the best way he can, and he ships them down the cheapest way he can. That gives us the benefit of having inspections upon the Isthmus. That rule was established during the time of Mr. Shonts, I understand, when it was suggested that unless some such provision as that was adopted that one section of the country would be discriminated against in favor of the other; in other words, if we purchased freight f. o. b. New York it would naturally be thought that we would ship it down by our own ships, the Panama Steamship Line, and therefore only the people or manufacturers in the vicinity of New York, where our ships went,

would be in a situation to compete, whereas if we purchased things delivered c. i. f., Isthmus, and allowed the shipper to arrange for his own freight transportation he would ship by any line, by tramp ship, regular line, or otherwise, and it threw the competition open to the whole country. While there are some disadvantages in that policy, the other has decided advantages and the policy has always maintained.

Mr. WANGER. Does not the second paragraph of section 2 seem to be in conflict with the provisions of the first section; leaving it to the option of the bidder whether he delivers on docks and ships of American register or in ships of foreign register?

Mr. ROGERS. At first blush that would seem to be so. If you place that construction on it the resolution does not amount to anything practically; it simply means that every shipper who ships down there in any quantity at all, and even small shippers, would go to the ship of foreign register, if he wanted to quote the lowest prices possible—that is, for large amounts. Of course it is a well-known fact that transportation to the Isthmus in foreign bottoms is much cheaper than it possibly can be in American bottoms.

Mr. ADAMSON. That does not mean that he could leave the option open after he has made his bid; it means that he has got to state in his bid what he has to do.

Mr. ROGERS. I know; but take cement, for example—and this clause is in the cement invitation. Presumably a bidder will say he will furnish the cement on the Isthmus at a certain amount per barrel if transported in foreign vessels and at a certain higher amount if transported in American vessels—exactly what the difference will be I can not say, but that it will be a substantial difference is certain.

Mr. ADAMSON. But the point is he asserts the option at the time he makes the bid?

Mr. ROGERS. Certainly he does.

Mr. WANGER. Would not a more reasonable construction of that phrase “at the option of the bidder” be to apply it to the entire section? In other words, it will be at the option of the bidder whether he will deliver at docks in seaports of the United States at a certain price, or whether he will deliver it at Colon or La Boca at certain other prices, and, first, the particular prices in ships of American register; and, second, the particular prices in ships of foreign register.

Mr. ROGERS. I will state that the first clause there, “on docks within reach of the ship’s tackle at seaports of the United States named by the bidder,” contemplates a purchase in the United States, the Commission then to take the material offered and convey it to the Isthmus by such facilities as it has, or may acquire. The second section provides that the shipper shall control the transportation to the Isthmus, and the material is only accepted on the Isthmus. The Commission assume no responsibility for it until it is delivered at Colon or La Boca. In that second aspect the shipper has the privilege of competing to send it down, first in ships of American register, and, second, in ships of foreign register.

Mr. WAGNER. I do not see what place the words “at his option” have in there. He names one figure at which the material is to be delivered by American ships, and he also names another figure for delivering in ships in foreign register.

Mr. ADAMSON. The option covers Colon and La Boca. In the first place the goods are bought in the United States and carried down by the company, and in the second case the bidder sells them to us on the Isthmus, and he expresses in his option whether he sells them to us at Colon or La Boca.

Mr. WANGER. Would the Commission leave that to the option of the bidder, whether the delivery should be at Colon or La Boca?

Mr. ROGERS. Oh, yes; that is always at the option of the bidder. It makes no difference as a general thing whether we get supplies at one end of the canal or the other.

Mr. ADAMSON. It is not accepted yet; it is simply his bid.

Mr. ROGERS. I think the expression "option of the bidder" there relates to either Colon or La Boca, giving him the privilege of making the delivery at one end of the canal or the other.

Mr. WANGER. That clears up the difficulty that I had in my mind about it because I assumed that the Commission would designate Colon or La Boca.

Mr. ROGERS. Of course, looking at it strictly as a business proposition, and taking that view of it, so far as the resolution is concerned, it will restrict the operations of the Commission and be more expensive, and perhaps it will handicap bidders in furnishing supplies from different sections of the United States. Those are the disadvantages. On the other hand, the advantages in favor of it are questions of general policy, inasmuch as this is a Government undertaking down there, whether it ought or ought not to be utilized to benefit American shipping, and it is that aspect of the case that I do not feel called on to explain.

Mr. ADAMSON. The general policy is for us to rob 10 per cent to help 1 per cent.

Mr. ROGERS. I do not think I ought to go into that phase of the case.

Mr. ESCH. We have already established the policy by the act of April, 1904, and also the act of 1906, have we not?

Mr. ROGERS. What policy do you mean?

Mr. ESCH. The policy of favoring home ships.

Mr. ROGERS. I do not know as to that.

Mr. ADAMSON. If I was one of that small per cent I would decline the benefaction made by the Government's discrimination in my favor as long as those who are running the Government deem it necessary to reflect on my honor by saying unless the bids are extortionate or unreasonable.

Mr. ROGERS. I think the bill would certainly be an unsafe one unless it had a provision that we think ought to be inserted in it in any event, and that is, that the general discretion should be vested in the President in cases of emergency or whenever the interests of the canal require it to authorize him to have supplies sent down in any ships he could get, and that amendment was suggested, if Congress was going to pass the bill; but it was not put in the bill.

Mr. ADAMSON. It is a very unsafe state of affairs to have the clutches of a few men around our throats so that we can not build a canal without a 10 per cent transaction.

Mr. WANGER. Mr. Lovering makes the suggestion that there ought to be a further contingency that in case of emergency any ship

might be resorted to that might be required. Have you any suggestion to make with regard to that?

Mr. ROGERS. I will just read you a clause from Colonel Goethal's letter. In Colonel Goethal's letter on this subject—which I suppose the committee has, or will have if they desire it—after discussing this question along the general lines that I have stated, he went on to name some particular suggestions with respect to amendments to the bill, and one of the provisions was to insert the following language, "or unless the uninterrupted progress of the work in the judgment of the President shall necessitate the charter of ships of foreign register." That amendment was not accepted. I think it was the idea, as stated in the Senate by some of the Senators, that that idea was already implied in the bill but it does not seem to me that it is clear that it is.

Mr. WANGER. Kindly read that language again.

Mr. ROGERS. The amendment should come in, in the joint resolution as now printed, in line 12, of page 1, after the word "unreasonable," so as to make the last two lines read as follows:

Unless the President shall in any case deem the bids or tenders therefor to be extortionate or unreasonable—

Now here comes the amendment—

or unless the uninterrupted progress of the work in the judgment of the President shall necessitate the charter of ships of foreign register.

Even with that provision inserted I do not know what would happen in event you made a contract with a contractor in the United States to supply a large quantity of material in American ships and then later on the American supply of ships proved inadequate or broke down, or something of that character happened, and it became necessary to get foreign ships in order to keep the Canal going. Of course, the contractor would always be willing to see that situation develop, because it would mean corresponding profit to him; he would make the difference unless that was very carefully adjusted in the form of a contract that was prepared.

Mr. ESCH. Is that contingency remote or present?

Mr. ROGERS. It is very present. I was just speaking of the situation this fall. We had a contract with the Erne Steamship Line to deliver 30,000 tons of coal a month to the Isthmus. It presently became apparent that that supply of coal would have to be increased; there was very great danger that a situation would develop in this country about Christmas time which had heretofore developed, whereby the coal mines would be unable to deliver coal to the seaboard, and we might possibly run short. We got almost panicky—some of our people—about the supply of the coal to the Isthmus. We applied to the Erne line and asked them if they could increase the tonnage to the Isthmus so as to get some more coal down there. They contended that they were utterly unable to do so, that no ships could be secured anywhere. So we took it up then through our own officers and went around the shipping market and after a great deal of difficulty succeeded in getting a number of tramps to take extra cargoes of coal down to the Isthmus so as to relieve the threatened coal famine. At that time I remember the question came up, and if we had been required to procure American ships at that time to take these extra cargoes down there, we could not have done it at

all in any large quantity; we could hardly get any ships, and it was only with considerable difficulty that we succeeded in getting some; and, of course, the delivery of this emergency coal, as I might call it, cost us a larger sum than delivery under our regular contract.

Mr. ESCH. Do you anticipate that that might happen with reference to this shipment of four and a half million barrels of cement?

Mr. ROGERS. You can not tell. It might possibly happen that a ship might become disabled at sea or might drop out of the regular line, or have to undergo repairs; two ships might have to undergo repairs, or something of that kind. It depends on the number of ships you use. It is estimated, I believe—I will not be absolutely sure of that—but it is estimated that it would take from eight to ten ships to supply the cement down to the Isthmus; to keep it going down in a regular constant stream. If anything should happen that one or two of those ships should be laid up, or if it should happen that the supply of cement on the Isthmus would become quickly exhausted, or should deteriorate or be ruined, it might become important very quickly to have additional shipments of cement to the Isthmus. I am not sufficiently posted as to the technicalities to state the difficulties that might arise in connection with the possible interruption in the supply of cement for the Isthmus, but I know that that situation did develop with respect to coal, and it was very important.

Mr. ADAMSON. I hope the Commission has never given any justification for this resolution by showing any disposition to discriminate against American ships where they were obtainable.

Mr. ROGERS. They never have; as a matter of fact, we have never controlled the charter of ships down there, unless perhaps in connection with the coal supply. We have bought, and have for two or three years purchased nearly all our supplies deliverable on the Isthmus—for instance, we would purchase from a manufacturer 500 freight cars or a certain number of locomotives to be used on the Isthmus. The bid is for delivery upon the Isthmus. Then the manufacturer goes into the market and procures a ship to take his materials to the Isthmus. Of course he advertises for the cheapest ship, and whatever ship offers to transport his materials for him at the lowest price, that ship he charters. That is how most of the stuff has been transported there. We have never had occasion to discriminate against American ships and of course never have, but there have been very few American ships that have ever made any attempt to my knowledge to transport any of this heavy stuff to the Isthmus.

Mr. WANGER. How much does Colonel Goethals estimate the cost of shipments to the Isthmus?

Mr. ROGERS. What do you mean—in quantity?

Mr. WANGER. I mean the aggregate of the cost of transportation. You say he estimated the cost at four millions more in ships of American register.

Mr. ROGERS. Colonel Goethals, in his letter to Secretary Taft of February 17, 1908, says:

Judging from the past year's experience, it has been estimated that for carrying one year's supply from twenty-five to thirty ships of about 5,000 net tons will be required.

That is about the number of ships. They made an approximate estimate as to the additional cost and fixed it at about \$4,000,000.

That was on the basis, I think, of about 75 cents per ton. If you apply it to coal, we take about 400,000 tons of coal a year, and the additional cost of shipping the additional coal down there was 75 cents, and that would make about \$300,000 a year; and if the canal should take six or seven more years in its construction there would be about \$2,000,000, you might say, additional on the coal contract. Now, on the cement we estimated in a similar way at about a million to a million and a half dollars extra; and the other freight that went down would probably make the total cost about \$4,000,000. That, of course, is an approximation. It might very well exceed it, and it might fall below it.

Mr. WANGER. What is the cost of shipments per ton by foreign ship?

Mr. ROGERS. The latest proposition we have had was to ship coal down at \$1.49 per ton and to allow 20 cents for the stevedore charges on the Isthmus, making \$1.29 net for the transportation of the coal and for loading in this country.

Mr. WANGER. Would the loading be the same with an American ship as a foreign ship?

Mr. ROGERS. Yes, sir.

Mr. WANGER. What I am trying to get at is the percentage of additional cost of shipment by American ships.

Mr. ROGERS. Our present contract for coal is \$1.51 per ton, and we have had propositions from two concerns to make it \$1.50 and \$1.49 per ton—two large concerns. I do not know what the American ships would transport the coal to the Isthmus for, but I do not believe they could transport it down there for anything like that. I have asked a number of shipping people and they do not seem to think that they could transport it within 75 cents a ton of that. Of course I do not know what they would do if they should bid.

Mr. WANGER. That would be assuming that it cost them by American ships \$2.25.

Mr. ROGERS. How is that?

Mr. WANGER. I say upon the basis of this increase of cost the shipments by American vessels would be \$2.25 per ton, would it?

Mr. ROGERS. Of course it is an approximation. One man told me, a ship broker, who was in the office not long since, that he did not believe any American ship could afford to take the coal down there for less than \$2.50 a ton. He said he thought his company could, because they had some arrangement to get some return freight, phosphate, or something of that sort, from Florida back, but he did not see how other American shipowners could ship for less than \$2.50 a ton. That would be about \$1 difference.

Mr. LOVERING. Under this bill if freight is offered on coal at \$1.50 on the one hand, and in foreign bottoms at \$2.50 or \$2.25, would the President accept the \$2.50 rate?

Mr. ROGERS. I can not say, of course, what the President would do.

Mr. LOVERING. Under this bill would he have the right to do it?

Mr. ROGERS. I can not say; it depends on the construction that should be placed on the language "unreasonable or extortionate;" it depends on how that could be construed. They might say with respect to any rate that it is not an extortionate or unreasonable demand for an American ship; that it is as cheap as an American ship could afford to take it down, and therefore it is not extortionate

or unreasonable. It might be unreasonable when compared with the foreign ships, but looking at it from the American point of view it may be a reasonable bid. So I can not undertake to construe this resolution in advance and say to what extent the President would be authorized to use foreign ships under it. In the case of the purchase of supplies, the rule that has been adopted is that wherever the American cost exceeded the foreign cost by an amount more than equal to the difference of the tariff, the American bid was considered unreasonable, but I do not know whether that rule would be applied here or not, and there has been some question about the application of it in the other case. But certainly if you insist on the construction that it must be an unreasonable bid from the point of view of the American ship-owner, I do not know whether you would be justified in rejecting a \$2.50 bid in that case as against the \$1.50 bid, provided that the \$2.50 bid was the very cheapest that the Americans could afford to transport the stuff to the Isthmus for.

Mr. LOVERING. Would it not be——

Mr. WANGER. Would not the proposition be much simpler if it simply was that preference should be given where the shipment by American vessels of United States register did not cost more than 75 cents per ton?

Mr. ROGERS. It would certainly be very much more explicit and definite.

Mr. WANGER. And where in cases of emergency it was necessary to ship by foreign vessels what had been contracted for on the basis of shipment by American vessels, that the contractor should receive 75 cents per ton less than the amount of his bid?

Mr. ADAMSON. I do not think that would be a consistent doctrine. If it is unreasonable to pay a fellow a bonus just because he happens to live in my State I do not think anything is unreasonable that he pays, no matter about the amount.

Mr. WANGER. I was simply trying to get at what would be a more workable proposition.

Mr. ROGERS. Of course it would relieve whoever has to ultimately pass upon this question of the embarrassment of construing that language, and of construing the whole act. There are, it seems to me, in the act as now drawn, or the resolution, a number of ambiguities; and I think it would occur to anyone else, perhaps, that there are a number of ambiguities. It was amended several times in the Senate. It might be that on a judicial examination of the act those ambiguities would disappear, and the act would be clear enough, but it requires no argument to show that if you fix an excess rate of 75 cents or \$1 a ton, that that requires no construction; it is a fixed rule of action. The expression "unreasonable or extortionate" does require a construction and consideration of the facts in each individual case.

Mr. ESCH. The partial list of vessels that were available, of American register, left with the committee, indicates 28 vessels with a total net register tons of 69,014. If that be true, do you think that this contingency may arise?

Mr. ROGERS. Well, I have just read from Colonel Goethals's statement that it has been estimated that for carrying one year's supplies, from 25 to 30 ships, or about 5,000 net tons, will be required. It is very much more economical and satisfactory to handle large ship-

ments of rock, coal, and cement, and things like that, of course, in large ships than in small ships.

Mr. ESCH. That is true.

Mr. ROGERS. And we have figured on using rather large ships. Exactly why he prefers 5,000-ton ships to 3,000-ton ships I do not know. I do not know all of his reasons, but that is one of them. What I merely meant to say was that the number of American ships of 5,000 tons or above, in the list that I have before me, is not more than four or five, four, I believe, as against twenty that were needed.

Mr. ADAMSON. Don't you think he just accidentally adopted those figures for convenience in giving an idea as to what the total amount would be?

Mr. ROGERS. To a certain extent, but if we were out for ships ourselves we certainly would charter very large freight carriers rather than small carriers.

Mr. ADAMSON. I am speaking of the extract from his letter. Do you not think that that is simply his method of calculating to give you the aggregate rather than to place stress on the size of the ships, in that extract that you have read from Colonel Goethals's letter?

Mr. ROGERS. Well, I never discussed that in detail with him. The only thing is that we always figure on getting ships of about that many tons. Whether these smaller ships of 3,000 tons will be available for the purpose I do not know. I suppose a small ship to the extent of its capacity could be utilized. Mr. Chamberlain can tell you better than I can whether a small ship can be operated per ton freight carried as economically as a large ship. I have never gone into that fully, but the necessity of having a pretty constant supply of stuff down there makes it desirable, it seems to me, to send it down in pretty large ships. I do not think a great number of small ships would be nearly as satisfactory as a more limited number of fair-sized or large-sized freight carriers.

Mr. ESCH. When Chief Engineer Stevens was before us a few years ago he spoke of the possibility of making cement on the Isthmus. Has that been given up?

Mr. ROGERS. Not entirely. I think it is preferred by the engineers to buy the cement in the United States if it can be procured here, but there is plenty of cement material there upon the Isthmus, and that material, by the tests that have been made, will make as high a grade of cement as, perhaps, any cement we could purchase here or possibly even abroad.

Mr. WANGER. When were those tests made?

Mr. ROGERS. They have been making those tests pretty much for the last year and a half. A geological expert was sent down to the Isthmus, and he made a calculation as to the cost of furnishing the cement on the Isthmus, the Government to excavate the rock and other materials that go into cement, transport the sand, to establish a cement plant, and to liquidate the cost of the plant by distributing it over, say, 5,000,000 barrels of cement, and I think he figured it out at \$1.34 a barrel that the cement could be manufactured for on the Isthmus, and in that \$1.34 the cost of the plant would be taken up; but whether those figures were correct or not I am not prepared to say. I have heard it stated that probably some of the elements of cost would be higher than he figured, but if the cost of the cement to be furnished under the present invitation should turn out to be exor-

bitant, or more than the Commission thought they were authorized to pay, they still have under consideration, I believe, the possibility of manufacturing their own cement upon the Isthmus, and under those circumstances they would advertise for a cement-making plant.

There being no further questions, the witness was excused.

STATEMENT OF D. T. CHAMBERLAIN.

Mr. CHAMBERLAIN. I just wish to take your time for a moment, Mr. Chairman and gentlemen, to try and remove, in the first place, a little misapprehension under which I think my friend Judge Rogers was laboring; and Colonel Goethals made the same mistake in the letter from which he has quoted. The Colonel, in writing of ships carrying 5,000 tons, it afterwards developed, meant 5,000 tons of cargo. Now, the figures that were given were the figures of ordinary construction—5,000 net tons—which, as you know, Mr. Chairman and the other gentlemen of the committee, meant 5,000 tons, or 100 cubic feet. Each one of those 5,000 tons carries two tons and a half of coal; so the Isthmian Canal Commission not only has it not now used, but is not likely in the immediate future, any considerable number of ships of 5,000 net tons. They carry 5,000 tons of cargo on that list that was furnished you and which I think you have, and will carry, according to the report of the Panama Railroad for last year, fully three times the transportation that will be required, namely, all this amount of cement that is to be carried in three years; it will carry all the coal, and in addition to that the miscellaneous cargo covered by the report of the Canal Commission.

I do not think there need be any apprehension on that subject, and I think it would hardly be well to characterize the resolution as unsafe in that particular.

Mr. ROGERS. Just in that connection, Mr. Chamberlain, will you allow me to read this clause contained in a later letter of Colonel Goethals:

It was understood at the time the letter was written that a ship of about 5,000 net tons would carry about 10,000 tons of cement in clinker form, or of coal, and it was with this understanding that the statement was made that twelve or fifteen will be required.

Mr. CHAMBERLAIN. Twelve or 15 instead of 30 or 40.

Mr. ROGERS. That was just for the cement?

Mr. CHAMBERLAIN. Twelve or 15 cargoes, not 12 or 15 ships. Two large ships could carry all the cement that is called for in this bill in the time that is required, about three years. That is a matter of calculation that I could give you in about two minutes.

I do not think there need be any apprehension on the score that there is not the American ship capacity to carry the cargo—carry the cement and the coal and such other miscellaneous cargo. If you will turn to the report—I haven't it here—of the Canal Commission for last year you will find that in all I think it was 57, or possibly 60, full cargoes were carried. The voyage can be made to the Isthmus by the slowest possible of the tramp ships that have been used, easily to the Isthmus, out and back, I should say in eight weeks. I think that is very long. So it will take only about eight ships to do that work.

Let me stop one moment to say that indisputably the charge will be larger in American ships. There is no present means of computing,

so far as I know, just what that difference will be. That will be available when the cement bids are opened, because the Isthmian Canal Commission was good enough to put the bids in the alternative form, their proposition having been copied into the joint resolution.

The resolution rests on well-established precedent. As the members of the committee well understand, dating way back to 1817 Congress passed a law with respect to trade between American ports, providing that it should be restricted to American vessels. In 1854 or 1855 that same principle was applied by Congress to trade between the Atlantic and Pacific coast ports of the United States by way of the Isthmus. In other words, the trade between New York and San Francisco, over the Panama Railroad, has been carried by American ships every since those ships have been running, so it is not an extreme or an unusual proposition to apply to this form of trade the use of American ships. Again, in 1904, Congress passed a resolution to the effect that supplies and materials for the Army and Navy should be carried in American ships. In 1906 Congress passed the resolution that supplies for use in the construction of the Canal should be of domestic manufacture. In each of those cases there was the exception that is carried into this resolution, that if the charge was unreasonable or excessive it is in the discretion of the President that foreign materials could be used.

Mr. ESCH. Was there not a later enunciation of that principle, as late as 1906?

Mr. CHAMBERLAIN. Yes, 1906. The joint resolution of February 25, 1906, after which this is modeled as closely as it can be, provides that material and equipment for use in the construction of the Panama Canal shall be restricted to articles of domestic production and manufacture from the lowest responsible bidder, "unless the President shall in any case deem the bids therefor unreasonable." That was the foundation of the resolution before the committee, and modifications have been added to it simply to meet special objections that have been raised from time to time. I would beg the committee to carefully consider the matter of not putting in the amendment that was proposed for this reason, because the situation—that is, I trust the committee will agree with me—that the situation is quite fully covered by the resolution itself. The one episode on which the apprehension of trouble is founded is a shortage, or a threatened shortage of coal at a time when all the tramp fleets of the world were at the command of the Commission. If a shortage could have existed at that time—and I say it without any idea of criticizing the Commission, because I have the highest respect for it, individually and collectively—that, it seems to me, must have been a situation brought about by administrative difficulties of one kind or another which probably could not have been foreseen. Here were all the fleets of the world at command at that time, and yet there seems to have been a shortage. Now, that shortage of transportation is not any more likely to exist under the conditions imposed by this resolution than before, it seems to me.

Mr. ROGERS. The shortage there of the coal was partly due to spontaneous combustion of coal on the Isthmus.

Mr. CHAMBERLAIN. I understood it be due to a lack of shipping facilities.

Mr. ROGERS. It was partly due to that and partly due to the unexpected increase in demand. It would have occurred also if there had

been a wreck, as occurred in two or three other cases where material was sent out.

Mr. CHAMBERLAIN. In fact, if some such resolution of this kind is not passed a singular exception in the fixed policy of the country for nearly one hundred years will be set up or will be continued. Furthermore, so far as the Isthmus itself is concerned, it would be what is really a deviation from the policy that has existed from 1854, because, as I say, the law now requires that transportation from one coast to the other by way of the Isthmus shall be in American ships—the ships of the Panama Canal Commission being American ships and always have been, and they have to be to conform with the law. Of course the foreign ships, the Hamburg-American line and some of the other lines carry to the Isthmus in this way: They carry from New York, for example, to Colon, and the cargo is transported across by rail and from Panama thence on down to Chili and Peru. That of course is not coastwise transportation, and that is open to foreign vessels, but the very considerable trade between the two coasts for many years has been restricted to American vessels, so it hardly seems that this is any considerable deviation from a policy that was adopted before the civil war.

Mr. WANGER. There is no objection, then, to the amendment suggested by Colonel Goethals?

Mr. CHAMBERLAIN. It seems to me that it is amply covered. In the preparation of this resolution every conceivable alternative is provided for. The Commission can use its own vessels and can charter vessels. It can buy vessels. The American vessels can be used, and if there are no American vessels, or if they are unreasonable, foreign vessels can be used. It seems to me that every possible situation is covered as carefully as may be. Now, there are some phrases in the resolution that perhaps might be objectionable here and there. I do not think they go to the merits of the proposition, but it does seem to me, as Judge Richards has suggested, that there are no insuperable difficulties in construing those when the purpose of Congress has been made reasonably clear.

Mr. ESCH. Then you see no inconsistency between sections 1 and 2?

Mr. CHAMBERLAIN. I have not been struck by any. Section 2, I take it, is designed to give the bidder the largest possible opportunity. In the first place, a bid to deliver here in the United States under transportation becomes a matter, to be settled by the Commission itself, either by chartered vessels—and it seems they do charter coal vessels—or by their own vessels. There is no question of New York as against New Orleans, or anything of that kind in the proposition. The second part of that gives the manufacturer the opportunity to bid to deliver either on the Atlantic or the Pacific coast, and in each of those cases either by an American ship or a foreign ship. How the language could have been made more strongly to cover every possible situation, and yet at the same time cling to a principle which has been followed, as I say, for certainly ninety years in the history of the Government, I can not say.

I thank you, Mr. Chairman and gentlemen.

The CHAIRMAN (Mr. Wanger). If there are no further questions to be asked, the committee will adjourn.

(The committee thereupon adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, April 3, 1908

The committee this day met, Hon. Irving P. Wanger acting chairman.

GOVERNMENT OF THE CANAL ZONE (H. R. 11744).

**STATEMENT OF MR. RICHARD B. ROGERS, GENERAL COUNSEL
ISTHMIAN CANAL COMMISSION—Continued.**

Mr. WANGER. Is there anything you wish to add to your statement of a few days ago, Mr. Rogers?

Mr. ROGERS. No, I believe not. I have looked over the report of the testimony, and I find that the discussion covers nearly all the aspects of the case.

Mr. WANGER. Then you may proceed to give your reasons in behalf of H. R. 11744.

Mr. ROGERS. Well, I have no general statement to make with respect to this bill. I came up here for the purpose of giving the committee any information and facts in my possession as to matters covered by the bill. I have read the bill over a number of times, and so far as I have been able to see, it is a very excellent one. I really have no suggestions to make by way of amendment as the bill is now drawn.

Mr. MANN. I would like to ask you about several of the details and provisions of the bill. Take section 7, for instance, in reference to conferring jurisdiction upon the supreme court of the Canal Zone.

Mr. ROGERS. I regard that as quite important.

Mr. MANN. That is in there virtually for the purpose of getting that matter unquestionably before the Supreme Court of the United States.

Mr. ROGERS. We have under the new code of civil procedure a method of completing land titles which is almost in conformity with section 7 as now drawn, excepting that litigation, of course, is instituted in one of the circuit courts, and from thence may be appealed to the supreme court of the Canal Zone.

Mr. MANN. I do not know, but I suppose that you can not give a private individual down there the right to bring a suit against the Government of the United States.

Mr. ROGERS. No; you can not.

Mr. MANN. But it is very important as to these land titles that that right should be conferred, I suppose, so that they may be tested?

Mr. ROGERS. Yes; if they design to give a private individual the right to sue the Government in ejectment, or to remove a cloud on a title, it will now require a special act of Congress.

Mr. ADAMSON. So far as that particular thing is concerned, considering all the circumstances talked about by you the other day, do you not believe it would be wiser and better and more economical for us to proceed as you have been doing by private negotiation and compromise?

Mr. ROGERS. I think the treaty ought to be exhausted so far as possible, but sometimes we will get a case where we can not proceed any further by private negotiation. In those cases the question of value has to be determined under the terms of the treaty by the

special tribunal created by the treaty, and if the tribunal can not pass upon the title, the question of title will therefore have to be thrashed out in the courts by proceedings instituted by the Government of the United States, or by some proceedings after occupation by the Government of the United States for damages, as, for example, proceedings before our Court of Claims up here.

Mr. MANN. This section of course would authorize the bringing of suits for the determination of these proprietary titles or claim of title, and so forth; but one provision of this section authorizes the President to revoke the jurisdiction at any time without, however, giving that authority as to the suits already commenced.

Mr. ROGERS. I think that if it is designed, under section 7, to authorize a private individual to execute an action against the Government with respect to any of the lands now occupied or claimed by the Government, that perhaps that fact ought to be expressly stated, otherwise section 7 might be construed with reference to the general provision of law that the Government can not be sued without its consent; in other words, the courts there might construe section 7 as now drawn as merely authorizing the commission to institute actions to settle land titles.

Mr. MANN. When we passed the original Panama Canal bill it was claimed to this committee that there was a very great likelihood of our paying immense prices for land down there owned by private individuals which we would have to overflow or use in some other way, and I thought it was extremely desirable to give the Government the fullest opportunity to have a fair determination of that question without being held up.

Mr. ROGERS. As the law stands to-day upon the Isthmus, we can proceed in our own court, the circuit court and the supreme court of the Canal Zone, for the purpose of adjudicating questions of title that have arisen there. When it comes to a question of making pecuniary compensation for land taken, the title in that instance being settled, and conceded to be in the claimant, the courts have held that we can only determine that particular question according to the provisions of the treaty; that is to say, the courts can try the question of title, but the question of damages, of pecuniary loss, must be settled by the joint commission under the terms of the treaty.

Mr. RICHARDSON. Under the court as it exists to-day?

Mr. ROGERS. Yes.

Mr. RICHARDSON. What act of Congress gives the President the right to confer upon the Supreme Court further additional jurisdiction on any subject?

Mr. ROGERS. That question is involved of course in the general authority of the President to make rules and regulations for the government of the Canal Zone.

Mr. MANN. The whole theory of this bill is that Congress is now actually conferring that authority, and not leaving it to the undefined realm, of speculation as has been the case heretofore?

Mr. ROGERS. And it is in that aspect of the case that I had read section 7, but I merely intended to state to the committee to-day that that gives Congressional authority for doing practically what is being done or can be done under the rules and orders promulgated there.

Mr. MANN. As to section 8, which provides for the jurisdiction of the Supreme Court of the United States, it is extremely desirable that there should be no question.

Mr. ROGERS. I think so, and at the present time there is a serious question as to whether the Supreme Court has any right under any form of case to hear an appeal from the Canal Zone. There is of course now pending in the Supreme Court of the United States, under a writ of error issued by direction of the Chief Justice, bringing up to the Supreme Court of the United States for review a case in which a capital sentence was imposed; but there seems to be no explicit provision of law which authorized that appeal, and the clerk of the court tells me that he thinks the appeal will have to be dismissed upon motion going to the jurisdiction of the Supreme Court.

Mr. ESCH. Has not the President by Executive order established trial by jury on the Zone recently?

Mr. ROGERS. Yes; there has been one trial under that order, and the defendant was acquitted.

Mr. RICHARDSON. What are the qualifications of the juror?

Mr. ROGERS. The qualifications of the juror are that he shall be able to read and understand the English language, that he shall be a man between 21 and 60 years of age, in the possession of his faculties, and shall have been a resident of the Canal Zone at least three months. He may also be an employee of the Commission up to a certain grade.

Mr. RICHARDSON. I understand that the jurisdiction that the Supreme Court has over the Panama Zone is acquired by reason of a regulation prescribed by the President. And you say it is practically just what this bill contemplates.

Mr. ROGERS. I say that under the law as now enforced by Executive order, practically the same results could be accomplished as is conferred by this section of the bill.

Mr. ADAMSON. Is this any more than the temporary law we passed, excepting that you prescribe the details? Isn't it on the same principle as the one which expired by limitation?

Mr. ROGERS. On certain aspects of the bill it is broader than that; for example, this section 8, which gives an appeal to the Supreme Court of the United States, is new legislation. A new Presidential order could give an appeal to the Supreme Court of the United States if it did not otherwise exist, but I do not believe any appeal lies to the Supreme Court of the United States on any question at the present time, there being no act of Congress which provides for it.

Mr. RICHARDSON. The jurisdiction conferred on the courts there now, can it be withdrawn by the President?

Mr. ROGERS. Yes, it can be; if he could establish it he could withdraw it.

Mr. RICHARDSON. And this bill provides for the same thing?

Mr. ROGERS. We have always taken this position with reference to these Presidential orders: The act of Congress passed in the Fifty-eighth Congress, I believe, extended to the Canal Zone the provisions of the Louisiana act, and there was an implied limitation that at the expiration of the Fifty-eighth Congress that power was withdrawn from the President; and that subject has been brought up by resolution that was reported by Mr. Harrison.

Mr. MANN. Reported from this committee?

Mr. ROGERS. Yes; and the President in a day or two will send a special message to Congress on that subject; so I do not think under those circumstances it is worth while for me to go into it here.

Mr. MANN. Still, that is a matter of controversy yet as to the existence of that power in the hands of the President. It would be far better to have that controversy settled by Congressional action, because no one questions the right of Congress to determine the matter.

Mr. ROGERS. I was going to state that as our present position. While it seems to us clear that the President has that authority, yet we would very much prefer to have Congress enact some legislation of that sort covering the case.

Mr. ADAMSON. When the temporary law expired by limitation at the end of the Fifty-eighth Congress, it left the President in possession, and he went on as though the act had not been passed; and the proposition now is to reenact that statute, which he is doing now, and this bill gives the details which that old act did not contain.

Mr. ROGERS. Yes; we would like to have the warrant of Congressional authority for doing what things are done there at present, although we believe firmly that they are done within the limit of the President's constitutional power.

Mr. RICHARDSON. You described the qualifications of a juror, and said that three months' residence was requisite. I suppose the definition of that residence, three months' residence, is sufficiently liberal to allow all who go there and go to work to be regarded as residents and competent jurors.

Mr. ROGERS. Yes; you could not get jurors who understood and spoke the English language under any other provision than that.

Mr. MANN. I direct your attention to section 9. There is a section that the President has no authority in reference to now. It is a section that provides "that the President shall provide a method for adjustment of all claims for personal injuries to employees while directly engaged in actual work of construction on the canal."

Mr. ROGERS. The President has no authority, as the Comptroller construes the law, to use any sum of money set aside by Congress for the construction of the canal in the adjustment of personal injury claims where that claim is one against the nation, and it would require legislation of a permanent character to meet that situation.

Mr. MANN. The Government is now carrying on the work of the construction of the canal much as a contractor would be carrying it on, and necessarily in the course of that work from time to time various employees do suffer personal injuries that are derived from the negligence, legally, of the Government, and now they have no right to obtain any damages for injuries.

Mr. RICHARDSON. I do not think you could insert in the bill a more wise, charitable, and humane provision than that.

Mr. ROGERS. I especially like that form in the section stating "that the President shall provide a method for adjustment of all claims for personal injury to employees." That will enable him to provide a system for paying compensation for the employees injured there without creating a class of litigation that would be vicious.

Mr. MANN. No; we do not want a lot of attorneys down there provoking litigation against the Government.

Mr. KENNEDY. Have any claims against the Government for the taking of land been adjusted down there?

Mr. ROGERS. We have purchased lately one large tract of land at Gatun, where the dam is being located. I gave the details of that at the last hearing.

Mr. MANN. You have arranged to move a town down there?

Mr. ROGERS. Yes; the town of Gatun, which we purchased.

Mr. MANN. Have you taken care of all the claims of the inhabitants owning their homes?

Mr. ROGERS. We have done that.

Mr. KENNEDY. That is under the power to purchase, of course?

Mr. ROGERS. Yes.

Mr. KENNEDY. Has anyone any right to adjust a claim against the United States down there; have they any other authority than the right to purchase land?

Mr. ROGERS. Yes; the treaty provides that in all cases where land shall be taken for the construction of the canal and for sanitary purposes that the damages sustained by the private landowner or the claimant shall be settled by a joint commission, two members of which are Panaman and two members Americans.

Mr. KENNEDY. So that would be the way a claim for the taking of land would have to be adjusted?

Mr. ROGERS. That is the way it has been done heretofore. It is not a very satisfactory arrangement, however, because where local interests are involved it is almost impossible to get an agreement between the Panamans and the Americans.

Mr. KENNEDY. Would not the passage of any act authorizing a court constituted as this bill authorizes the President to constitute a court for the trying of those questions be in derogation of the express provisions of the treaty?

Mr. MANN. This bill does not suit that; it only provides for the settlement of the right to title to property. The treaty provides for the method of arriving at the value of the property. We could not change that.

Mr. ROGERS. No; I would say they supplement each other.

Mr. MANN. The main questions involved are not the value of the property so much as it is who owns a lot of this disputed property.

Mr. ROGERS. If that question is settled then the amount of compensation to be paid has to be determined if it can not be agreed upon by this joint commission. The courts will not undertake to determine that, and it is so held.

Mr. KENNEDY. That would be determined by the language of the treaty. I did not know but that the treaty provided for the adjustment of not only the values but the titles as well.

Mr. ROGERS. It does not provide for the adjustment of the titles.

Mr. MANN. Now, as to section 10. That section relates to the matter of extradition and endeavors to provide that all laws and treaties relating to the extradition of persons accused of crime shall extend to and be considered in force in the Canal Zone, and for such purposes the Canal Zone shall be considered and treated in all respects as an organized Territory of the United States. It would seem to me that that is the easiest way to get at that part of the proposition. As I understand it, we now need very much down there some method of extradition.

Mr. ROGERS. We do. An extradition treaty was prepared by the convention to be agreed upon between Panama and the United States.

Mr. MANN. That is what I have reference to. It does not relate to extradition merely between the United States and Panama, but between the Canal Zone and any country with which we have an extradition treaty.

Mr. ROGERS. Yes, I noticed that, and consider that important too, because there is an extreme doubt at the present time whether extradition treaties between the United States and foreign countries do extend to the Canal Zone.

Mr. MANN. I do not think there is much doubt about that; from what we have heard, it does not apply.

Mr. ROGERS. That is my view.

Mr. ESCH. Has there been much need of the exercise of such power up to date?

Mr. ROGERS. One or two cases have arisen by which that power ought to have been exercised, but we have been rather fortunate up to the present time in having escaped extradition questions. Something ought to be done; either a general law enacted giving the Canal Zone the benefit of our extradition treaties with foreign countries, or else a special extradition treaty should be taken up and adjusted with respect to the Canal Zone and foreign countries.

Mr. MANN. Of course that would be a great labor, and we do not want to make that a refuge for criminals.

Now, the latter part of that section I am in doubt about. Of course the Canal Zone runs right through Panama, and not only that, but one side of the street in the city of Panama is in the Canal Zone and the other side within the city of Panama; and it is the same way at Colon. Under the existing conditions, if a man commits a crime on the street he can simply step over to the other side and legally he is exempt from arrest. I suppose that they may kidnap him and get him right away, but there have been cases where they did not arrest a man, and there has been considerable trouble in some cases.

Mr. ROGERS. I was going to suggest with respect to this section the elimination of that last clause, commencing with line 16: "And the granting to police officials of the Republic of Panama police power in the Canal Zone over offenders fleeing across the boundary line while actual pursuit is being made." I do not consider that a wise provision, and I think it would get us in trouble down there.

Mr. MANN. Let us see about that. It reads: "The President may also, by agreement with the Republic of Panama, arrange and provide for the summary arrest and extradition of persons between the Canal Zone and the Republic of Panama and the granting to the police officials of the Republic of Panama police power in the Canal Zone over offenders fleeing across the boundary line while actual pursuit is being made." That confers authority upon the President to make an agreement, and of course that agreement would cover the question of the arrest by the Canal Zone police officials of people fleeing across the line into Panama. We could not provide that in the bill because we have no control over the territory of Panama. They told me down there that it was very essential to be able to step over the line and nab a man who was running away from them.

Mr. ROGERS. I believe it is very much wiser to allow those arrests to be made with respect to the two territories by the officials of the territory in which the fugitive is found.

Mr. MANN. That would be a matter of agreement between the parties.

Mr. ROGERS. I feel sure that if the Panama police go into the zone and attempt to arrest one of our men that it would create trouble. It did create trouble when some of our people got in trouble in Colon, some Americans, a year ago.

Mr. MANN. That is, where it was clearly illegal.

Mr. ROGERS. Of course that leaves the discretion with the President—

Mr. MANN. No; it leaves it in the discretion of the President to make the agreement, and unless he can make the agreement there is nothing to do.

Mr. ROGERS. I believe that if the extradition treaty were enacted in the form now drawn that the practical situation will be met there; and I believe it would be better not to give the Panamans authority to pursue fugitives into our territory. The point about it is this: I think that there is some danger of racial antagonism between our men and the Panamans. There has been evidence of it at different times, and I believe the situation would be improved if our people should not go into Panama territory and theirs should not come into the Canal Zone; and it would probably be better to allow the arrest to be made after some little time had elapsed, when the excitement had subsided, under an extradition arrangement.

Mr. RICHARDSON. Do you base that upon the natural antagonism of the races?

Mr. ROGERS. Yes; I think it exists there to-day. If we had a provision that one of our men could go into the Panama territory and pursue a fugitive, or one of their men could come into our territory, then that would be done at once when the excitement was high, and it would create trouble. If it was a matter to be settled by the slower process of extradition, the feeling would have time to subside, the matter would be looked at calmly, the ends of justice would be met just as well, and there would be less danger of friction.

Mr. KNOWLAND. But would there not be the danger of the criminal getting away?

Mr. ROGERS. Not under an extradition arrangement.

Mr. HUBBARD. Would there be any danger of friction if the Panaman police were authorized to take fleeing Panamans from our territory?

Mr. ROGERS. There would not be as much.

Mr. HUBBARD. Why should there be any racial antagonism?

Mr. ROGERS. Natural resentment, you might say, against the officers of the Panaman Government coming into the Canal Zone and attempting to administer any form of justice. That would be the only thing in that case.

Mr. RICHARDSON. Referring again to the bill and section 3, I do not understand why it is that the President, under that section, shall be directed to excavate and complete a lock canal between the Caribbean Sea and the Pacific Ocean. I thought that was provided for long ago in the original act; and then I thought that when they adopted the lock-and-dam plan that it was finally agreed upon. Why is that in the bill, Mr. Rogers?

Mr. MANN. Mr. Rogers did not draw this bill. This provision in some shape has been in every bill introduced or passed in either body upon this subject. It does not change the law in any way whatever.

Mr. RICHARDSON. I thought it might be perhaps that the regulations were not broad enough, and they had to enlarge them.

Mr. ADAMSON. Is there any necessity to keep reaffirming that to impress it upon the minds of the people that the only business we have down there is to build the canal?

Mr. RICHARDSON. Yes; what is the purpose of reaffirming it?

Mr. MANN. This bill provides, in the last section, that the Isthmian Canal Commission shall cease to exist. The existing law provides that the President, through the Isthmian Canal Commission, shall dig the canal, and this simply provides that the President shall dig it. It changes it in that respect. The question is whether it should be done by the Isthmian Canal Commission or by the President.

Mr. ESCH. The question seems to be: Has the existing order worked in a practical way, and with reasonable satisfaction?

Mr. ROGERS. Which order do you refer to?

Mr. ESCH. The existing order we have down there now—that is, the Commission operating under the direction of the President and the Secretary of War.

Mr. ROGERS. I will say with respect to that, that at the present time the Commission seems to be working very well, but that is largely, I think, on account of the high character of the individual members of the Commission. But as a question of general policy, looking to the future and the possibility of trouble arising, I must say that I am in favor of this bill of Mr. Mann's. That is merely my individual view about it, and I do not say that that is the view of the Secretary of War or anyone else.

Mr. ESCH. Would it meet the conditions of possible trouble if we left the existing order as it is now, adding the provisions of, say, sections 8, 9, and possibly 10?

Mr. MANN. Do you mean to leave the Commission in existence? Of course the position of the House has always been for the abolition of the Commission. The House was opposed to the creation of a commission, and has passed one or two bills to abolish the Commission.

Mr. ESCH. I understand the position of the House thoroughly, and I remember that we got in a deadlock with the Senate in regard to it, but I would like to have Mr. Rogers's view upon it.

Mr. ROGERS. I will state the theoretical objection to it. As Mr. Mann stated a moment ago, the canal is now being constructed as by a large private corporation—that is to say, the methods we endeavor to assimilate as closely as possible are those of a large American corporation which would be engaged in large construction work. The Commissioners, to a certain extent, take the place of a board of directors of an American corporation, which I have alluded to theoretically.

Now, at the same time, the Commission is located upon the Isthmus, and each member of the Commission is at the head of an active department, and has under him a large number of men, several thousands in several cases; and he has an especial portion of the work under him, and certain specific duties to discharge. He reports, with

respect to the specific active work that he is carrying on, to the chairman, and is subject to the order and the directions of the chairman. Therefore, in the first aspect, if the chairman disapproves of an act done by a Commissioner, he has authority to overrule it. Nevertheless, as the law is now stated, all of the Commissioners put together have authority to overrule the chairman, so you have a situation where a Commissioner may do something which the chairman disapproves and be overruled by the chairman, and the Commissioner may then bring it before the whole Commission, and the whole Commission may overrule the chairman and in the interest of the individual Commissioner—that is, theoretically. I do not mean to say that any such a condition of friction has existed on the Zone, since the Commission has been sent down there, but I am simply looking more to the future than to the present, and when I am asked a question as to whether I think that that provision of this bill is the wisest provision for the ultimate construction of the canal, I must say that I believe it is.

Mr. ESCH. I see, upon a hasty reading of the bill, no recognition as a separate entity of the Panama Railroad Company. If this bill is passed, would not that separate entity be destroyed?

Mr. MANN. Oh, no.

Mr. ROGERS. I think not.

Mr. MANN. This would not affect it at all.

Mr. ESCH. We have always felt that that was a desirable thing.

Mr. ROGERS. There is this provision in the bill at the end of section 3: "And he shall also, whenever the right so to do has been acquired, cause the Panama Railroad and the property and rights appertaining thereto to be managed and operated in such manner as may be deemed desirable." It is quite possible that somebody in reading that clause might think that he was authorized to operate the Panama Railroad directly, and not through its existing organization, but I do not believe that is the proper construction to be placed upon that section.

Mr. RICHARDSON. Is it being operated to-day, and has it not been operated all the time, under the old act under which it was incorporated, although the Government owns all the shares?

Mr. ROGERS. There are many advantages to be obtained by allowing the organization with respect to the Panama Railroad Company to exist, and I would dislike very much to see any bill come before Congress which placed that matter in doubt.

Mr. MANN. I am not particular about that provision of the bill. That was in the former bill, which I introduced, which passed the House, and which died in deadlock. At that time it received a construction, not from people who had the right legally to determine it, but the construction of the Secretary of War and other people interested in the matter, and they were all of the opinion at that time that that provision of itself would change the status of the Panama Railroad Company, but that if Congress at any time should provide, as it may and might, that the Panama Railroad Company as an entity should be abolished, and it should become a part of the work of construction of the canal, then this provision would apply and govern the situation.

Mr. RICHARDSON. Does not the Panama Canal Commission constitute a part of the board of directors of the Panama Railroad Company?

Mr. ROGERS. Yes.

Mr. RICHARDSON. Who else are the board of directors?

Mr. ROGERS. There are 13 directors of the Panama Railroad Company, and they are selected up here in the United States from the old Commissioners largely. Mr. Drake, the vice-president, is one of the directors.

Mr. RICHARDSON. How many directors live in the city of New York who are citizens?

Mr. ROGERS. There is only one who lives in the city of New York, and six live here in Washington, and we can always have a majority for the transaction of business at the directors' meetings in New York; and nearly all of the Panama Railroad business is transacted by the American directors.

Mr. RICHARDSON. Do the directors, outside of the Panama Canal Commissioners, own the steamboat lines that ply between New York and Panama?

Mr. ROGERS. Yes; that is owned by the railroad company.

Mr. RICHARDSON. And those directors who, outside of the Panama Canal Commission, are interested in those steam lines?

Mr. HUBBARD. Do you mean personally interested?

Mr. RICHARDSON. Yes.

Mr. ROGERS. Oh, no; nothing of that kind.

Mr. MANN. The steamships that operate are owned by the Panama Railroad Company. As I understand it, the directors are all practically Government officials?

Mr. ROGERS. Practically all.

Mr. HUBBARD. Mr. Richardson seemed to be under the impression that some of the directors are personally interested in those lines.

Mr. RICHARDSON. You said, Mr. Rogers, that you objected to that clause in the last part of section 3. Why do you think it better to run that Panama Railroad under the old original act than to allow it to be controlled by regulations prescribed by the President?

Mr. ROGERS. There are several advantages of a practical character in favor of allowing the Panama Railroad to be operated as a private corporation. In the first place, it would be impossible to operate it commercially at the present time unless it were excepted altogether from the Government regulations with respect to accountancy and other features that are safeguarded through the Government department; for example, the Panama Railroad Company has to make advances to its connections of a certain portion of a through freight rate, which at times amounts to a great many thousands of dollars, and unless those advances were made the railroad or the steamship line could not be operated commercially at all; we would lose the benefit of all commercial business.

Mr. RICHARDSON. What proportion of the freight transported by the Panama Railroad is consigned to individuals and not to the Government?

Mr. ROGERS. Quite a good deal of it, and there is so much of that commercial business that it not only gives us approximately \$1,000,000 a year to help run the Panama Railroad, but that business is in the nature of an obligation of a trust which the Panama Railroad Company must discharge for the people of the world.

Mr. RICHARDSON. Would it make any difference in the rate charged between the individual property and the property transported by the Government?

Mr. ROGERS. None on our steamship lines.

Mr. RICHARDSON. Where do they make it?

Mr. ROGERS. On the Isthmus. The Government has a special rate for transportation there under an agreement, but practically the Commission pays the full rate, you might say, as a whole, for services performed by the Panama Railroad.

Mr. RICHARDSON. What is the proportionate difference in the discrimination between the Government charges and the individual charges?

Mr. ROGERS. I think they get half rates on the Isthmus over the railroad lines on certain commodities.

Mr. MANN. Is it not a fact that there is an interchange of business between the canal people in the construction of the Panama Railroad passing back and forth on the track with reference to the disposition of spoil, and all that, so that no one can ever figure out what would be the proportion, and that they simply resort to arbitrary rates?

Mr. ROGERS. That is quite true, but they are pretty keen between the Commission and the railroad company in getting those rates adjusted on what seems to be a proper basis; for example, the railroad company does not hesitate to press a claim that it is not being paid as much as it ought to be paid for certain services, and the Commission is trying to get those services cut down; but I do not consider that a disadvantage, because I think it has a tendency to produce a greater degree of economy.

Mr. MANN. There is another matter in connection with whether the Panama Railroad shall be operated as a separate entity or not through a Government agency, and that is in regard to the matter of claims. Isn't it true that every railroad or shipping company is constantly confronted with various claims made by consignors or consignees, usually in small amounts, in reference to transportation and damaged property?

Mr. ROGERS. I was going to mention that. I was going to mention that when I started out to summarize the various advantages of leaving that corporation where it is now. The first advantage I spoke of was the preservation of our canal business, which costs approximately \$1,000,000 a year, to operate the steamship line and the railroad line, and which would be lost on account of the Government methods, which would prevent us from making advances to shippers, and also would prevent us from settling in the proper way the claims of shippers for damages. Then, at the present time, inasmuch as some members of the committee here seem to approve of a provision which authorizes the President to settle damage claims, where the injury is received, through the Commission, we have the benefit of a general rule of law with respect to the Panama Railroad, which can be sued, of course, it being subject to the same liabilities of any private corporation for violation of its common-law duties. Then we have another advantage that I have always regarded as quite considerable. The railroad company is operated to-day strictly on railroad experience. The men who are in charge of the actual management are practical railroad men, and we have infused in the work an entirely new line, a different line, from the experience perhaps that is brought to bear on the construction of the canal by the Commission alone. I do not mean to say that the experience is better, or that the service is superior, but you have both of them working along side by side and you have the benefit of competition.

Then there is another advantage that always appealed to Mr. Shonts, especially as he was a practical railroad man, as well as railroad people such as Mr. Slifer and all the other practical men, and that is the operating of the road strictly from the point of view of gross earnings, expenses, and net earnings. They try, in other words, to make the railroad self-sustaining—to make it a paying proposition—and trying in every way to effect economies. That is some advantage.

Mr. ESCH. Are they so doing that as to be able to pay off the bonded indebtedness?

Mr. ROGERS. The bonded indebtedness has been retired under an act of Congress, a note substituted by the Government in lieu of the act, and we are accumulating a surplus, but we have to carry a million and a half in our commissary department alone; and I would like to say, before I leave this general question, that the railroad company can handle the commissary department at the present time in a way in which the Commission could not possibly handle it, and that is the reason why it is left with the railroad company. We run it like a branch of any other private business. We buy the supplies, sell them, take the money, purchase other supplies, sell that, and use the same capital over and over again. If that was handled by the Commission that money would have to be covered into the Treasury as miscellaneous receipts, and then an appropriation would have to be made every year for the gross amount of the commissary supplies to be required during the ensuing fiscal year.

Mr. ADAMSON. Now, one question on the other side of the proposition. We own the stock, we elect the directors, we can control the general policy of the railroad, and you have presented a number of reasons why the autonomy of the railroad under its old charter should be preserved. Do you know any convincing reason why we ought to change it?

Mr. ROGERS. I do not know of any. The only argument I have ever heard advanced in connection with the matter was that it would simplify the accounting between the railroad and the Commission; that is to say, those accounts would be abolished; but we are able to meet that situation, I think, in such a way that I believe it to be only a slight disadvantage, if it is any disadvantage at all. We are to-day having some difficulty in the adjustment of the accounts between the Commission and the railroad because the Commission does not pay the railroad company as promptly as it ought to, and we are practically stripped of all cash funds.

Mr. RICHARDSON. What is the amount of the note that the Government holds?

Mr. ROGERS. Two million one hundred and forty-eight thousand dollars.

Mr. RICHARDSON. What is the interest on it?

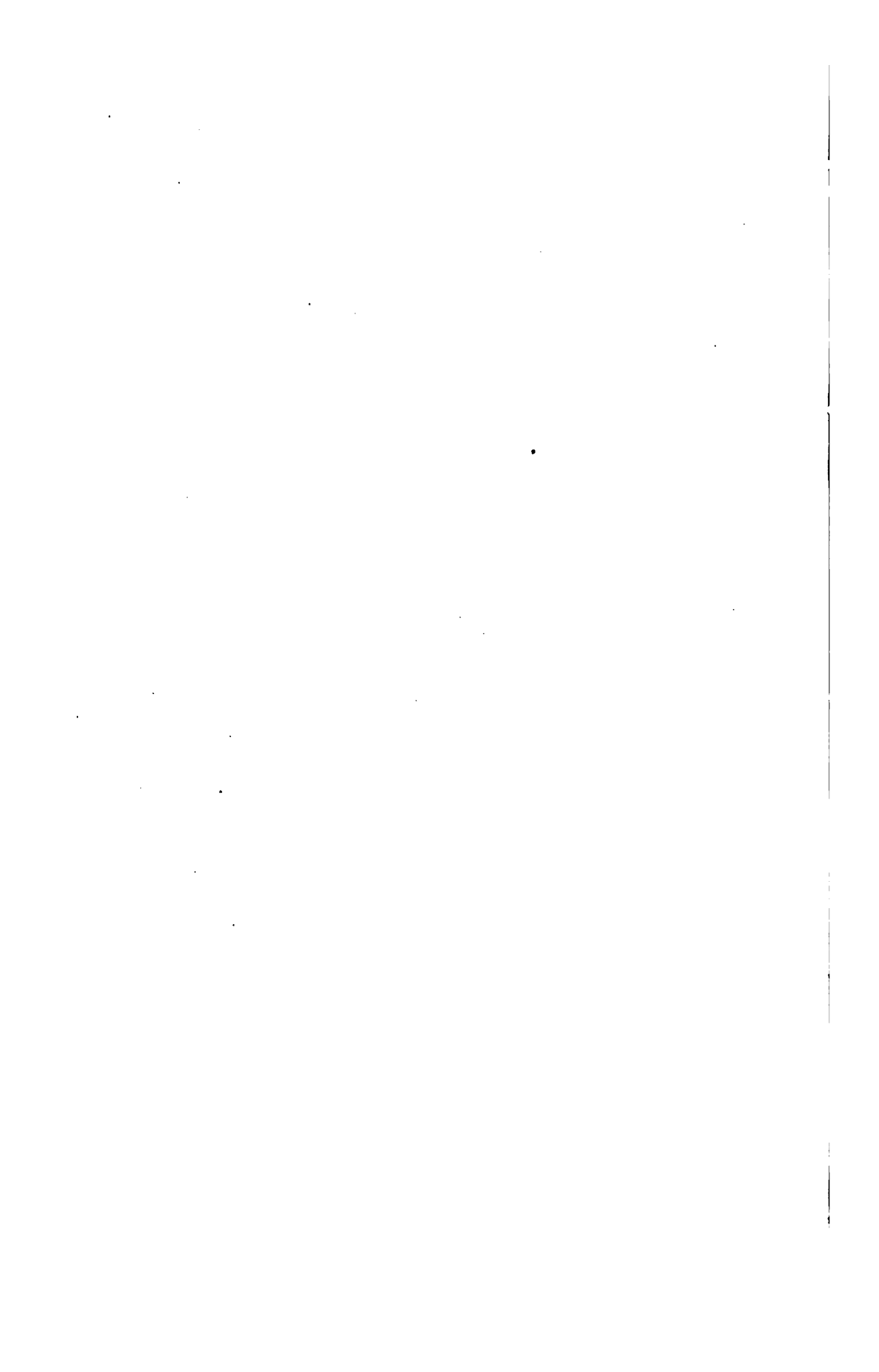
Mr. ROGERS. Senator Kittredge, when the appropriation bill was in the Senate, added a provision to retire the 4 per cent first-mortgage bonds of the Panama Railroad Company, which under the terms of the mortgage could be retired, in half-year periods, at 105 and accrued interest. There was no provision in the law which required the Panama Railroad to execute any obligation to the Government at all, but when the question came up we thought it was simply an act of justice that the Panama Railroad, having received the benefit of the readjustment of its interest charges, and thereby having saved

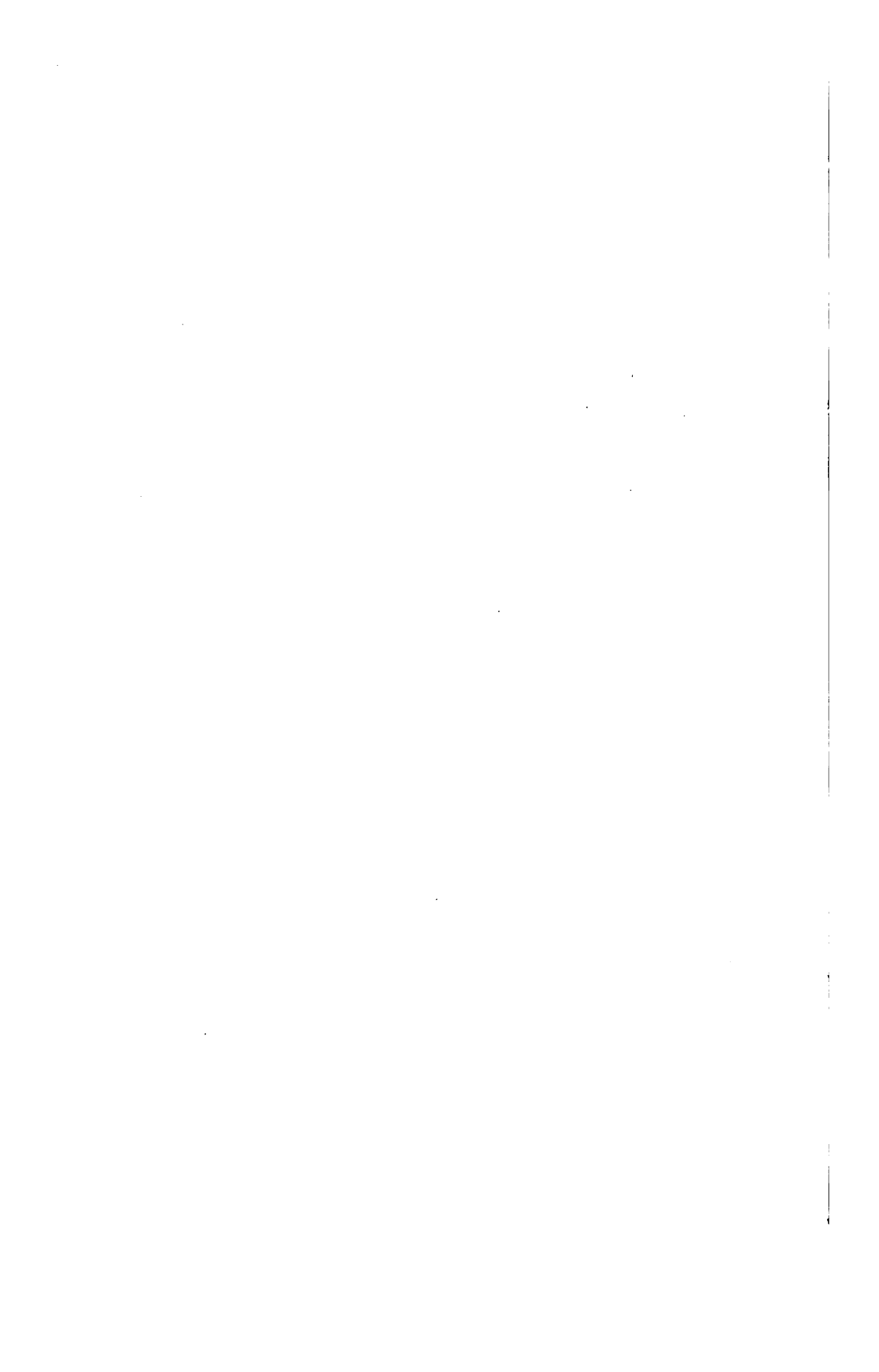
a very large sum of money, should execute to the Government its note for \$2,148,000 and pay to the Government \$100,000 a year from its earnings as a sinking fund to extinguish that note, and it is doing that. The result in time will be that the railroad will have paid back the whole \$2,148,000 necessary to retire the bonds, and the Panama Railroad Company in the meantime will have the benefit of the reduced rate of interest which the Government has to take—2 per cent.

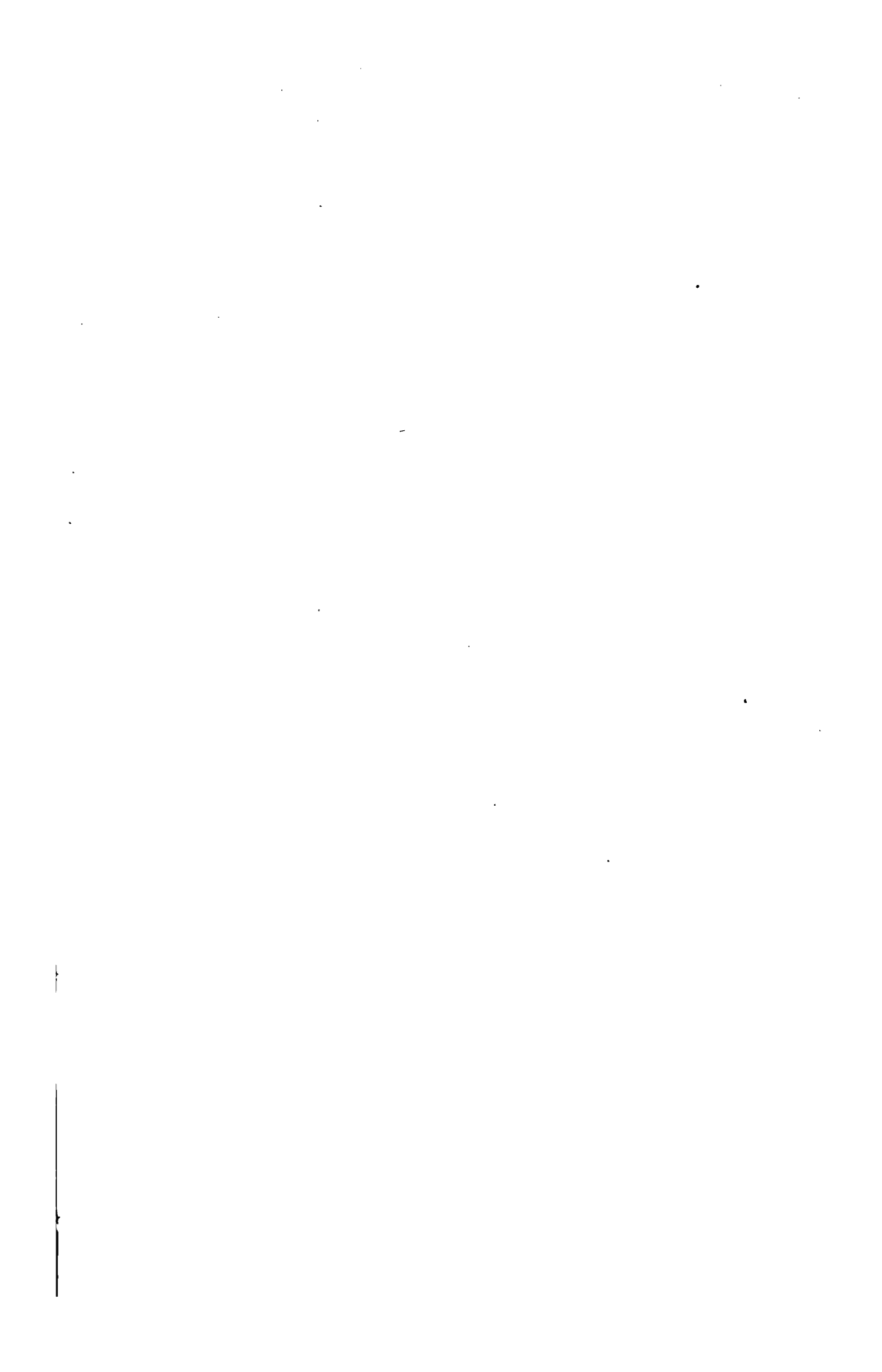
Mr. RICHARDSON. Has any payment been made on that note?

Mr. ROGERS. There are payments right along when the semiannual periods arrive. We pay $2\frac{1}{2}$ per cent and in addition to that we pay \$100,000 a year as a partial payment on the note, so that in less than twenty years the note will be paid off.

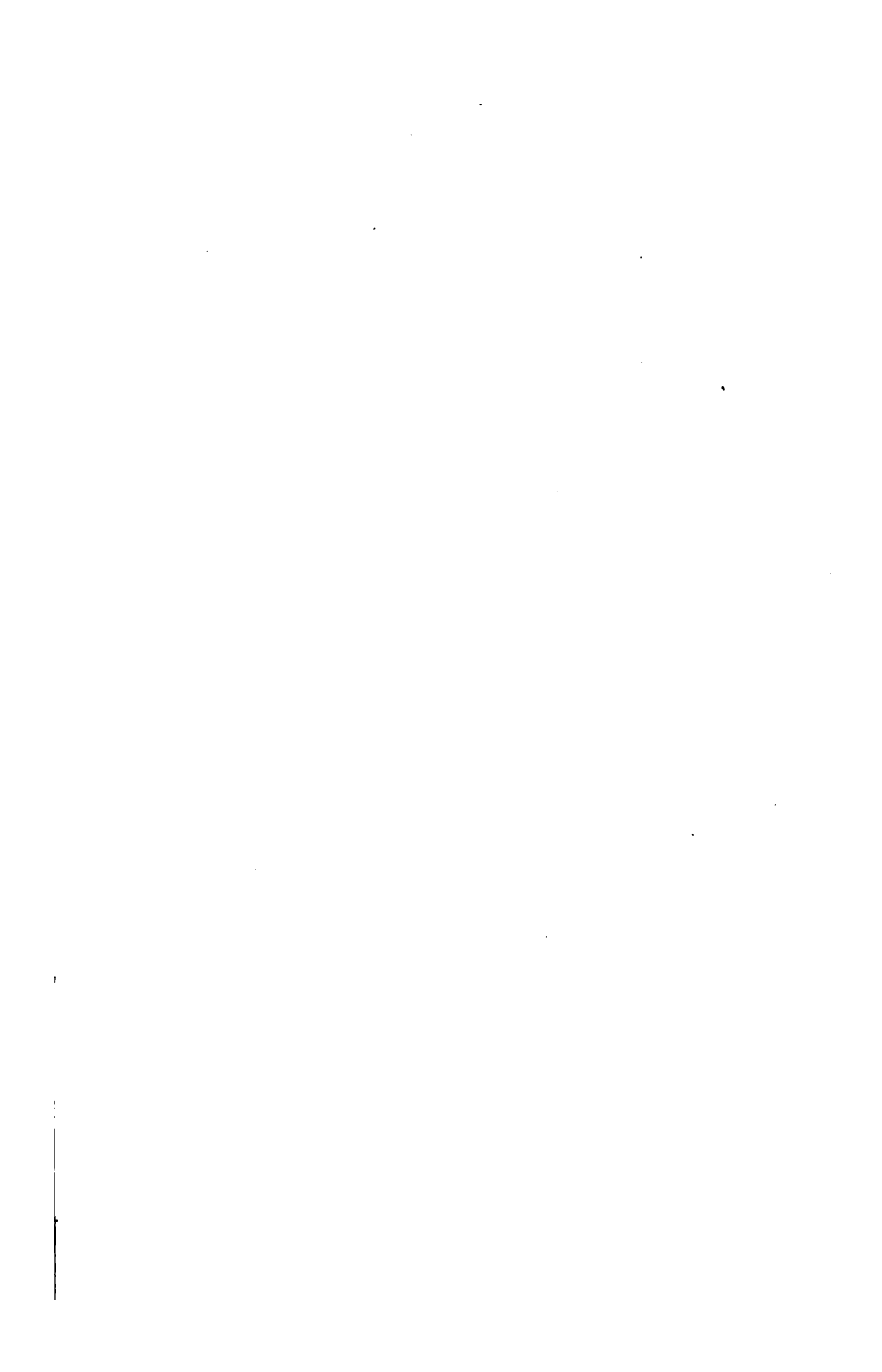
Adjourned at 12 o'clock noon.

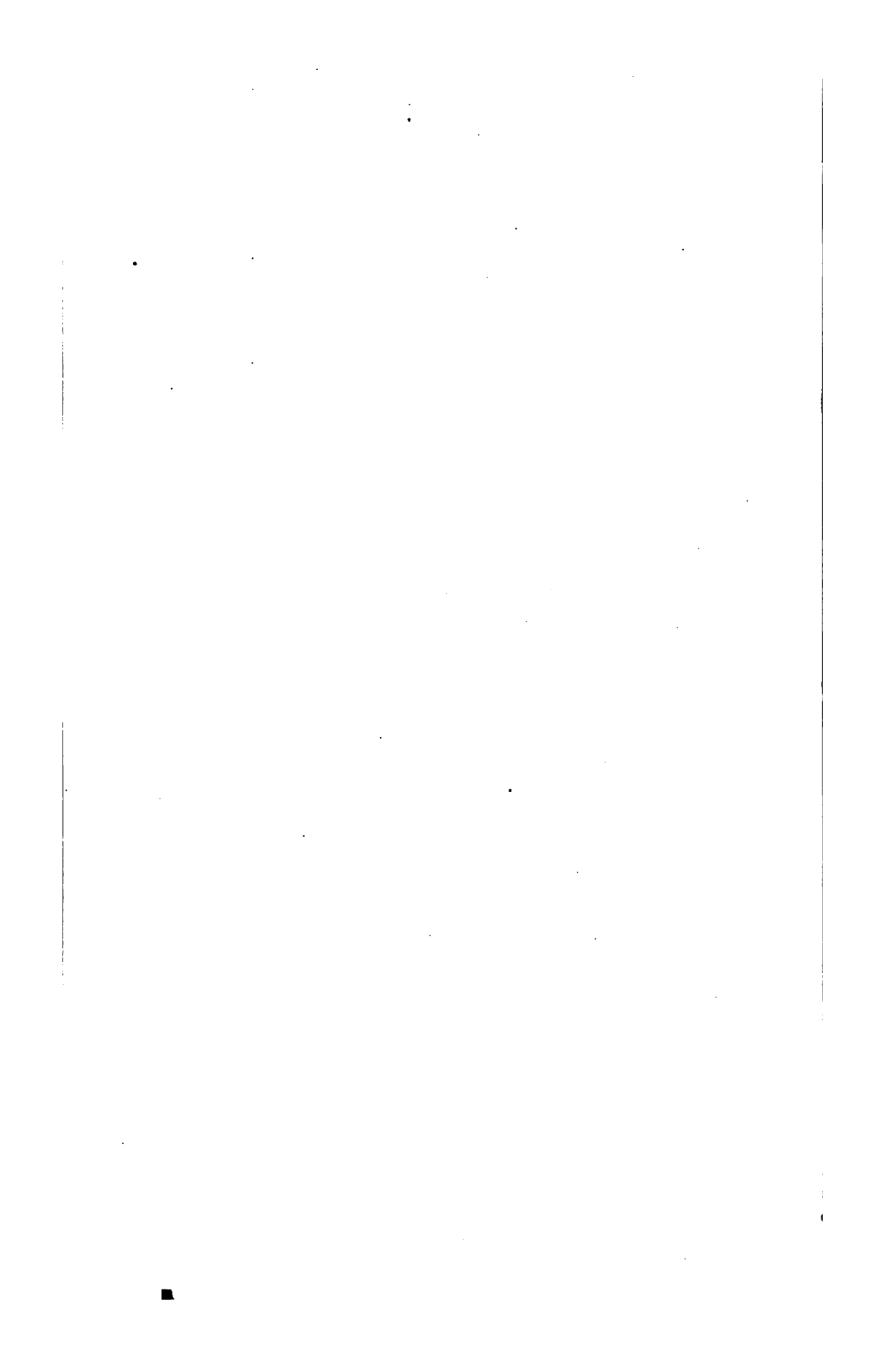


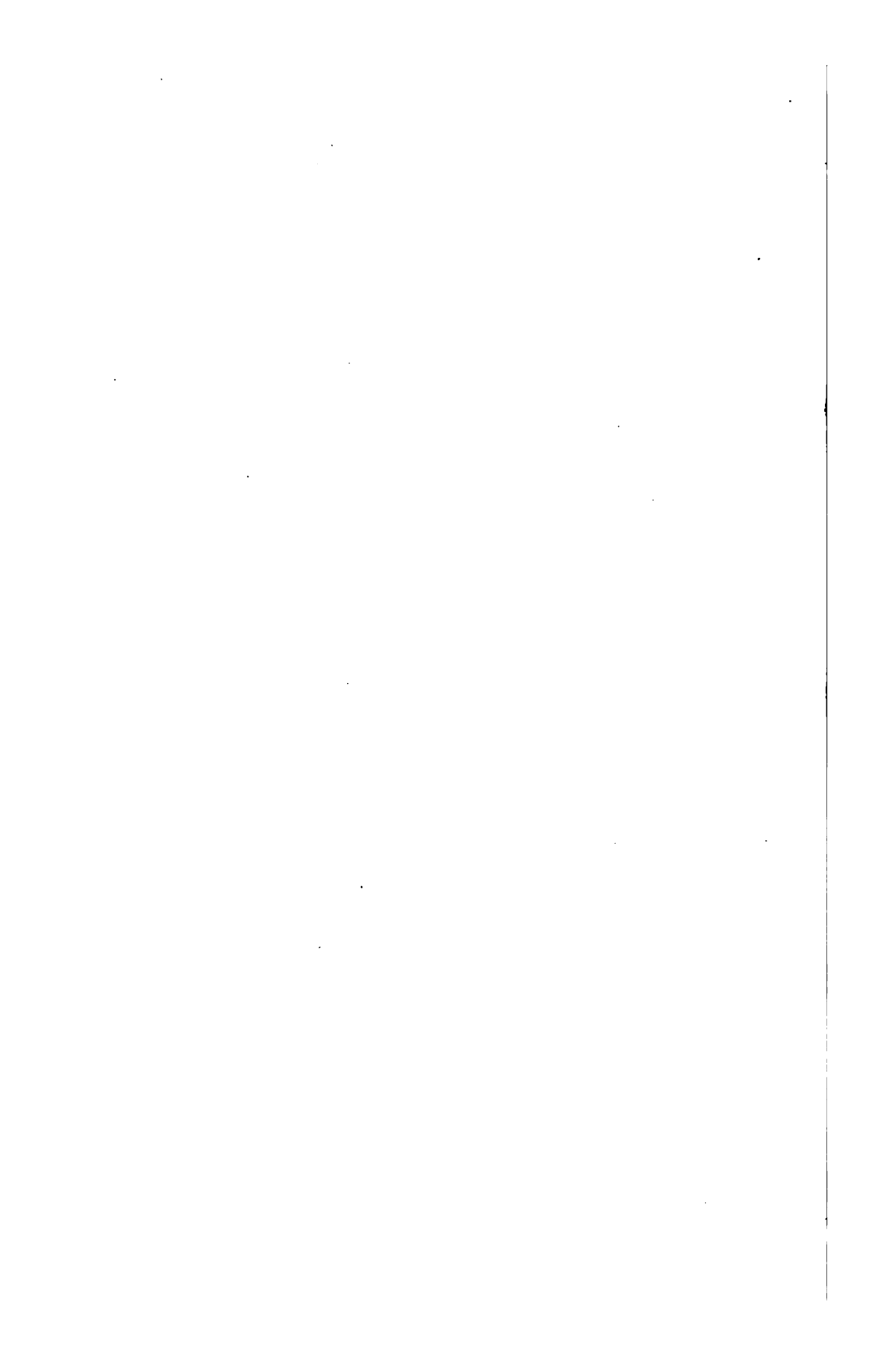


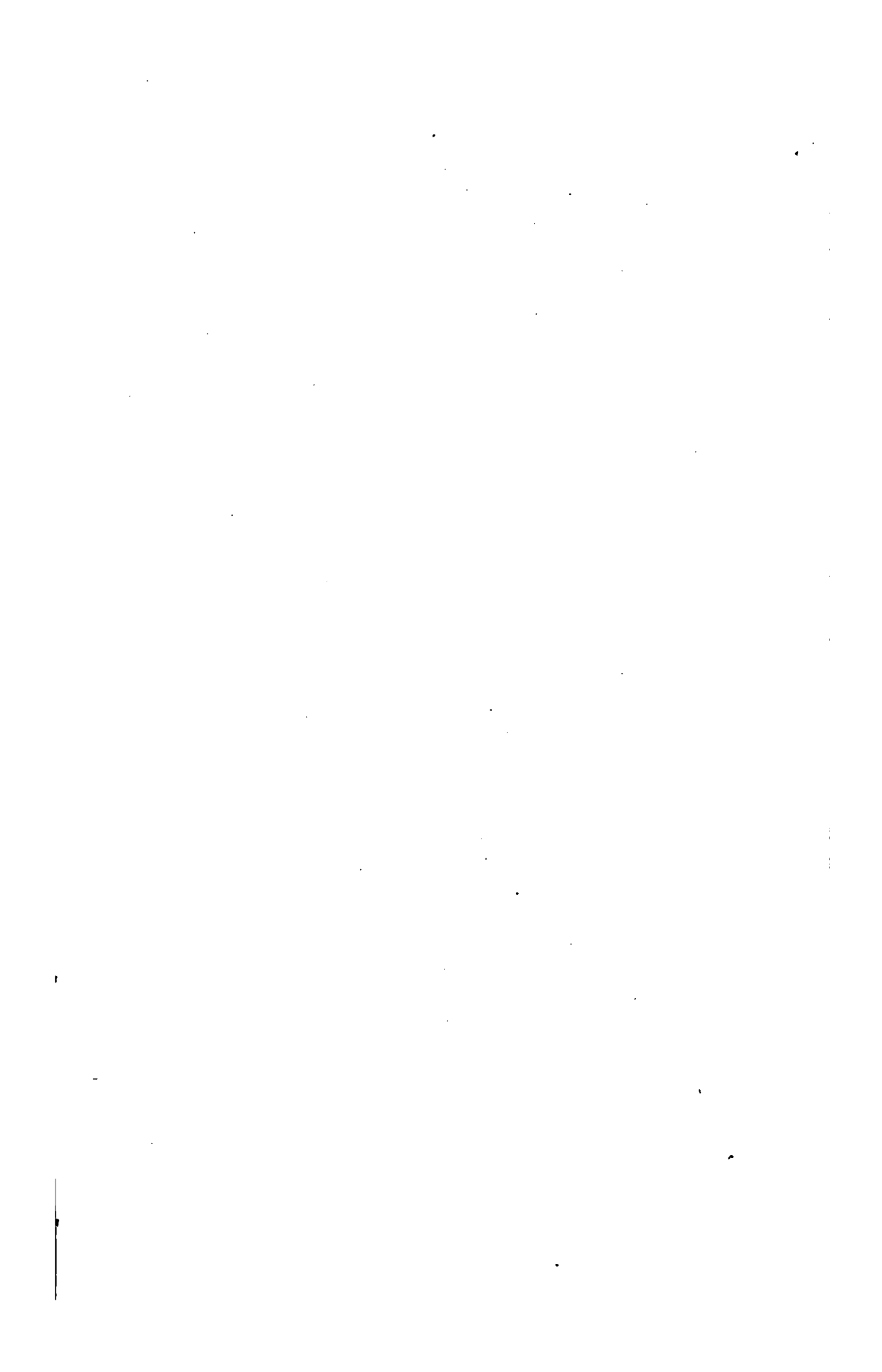


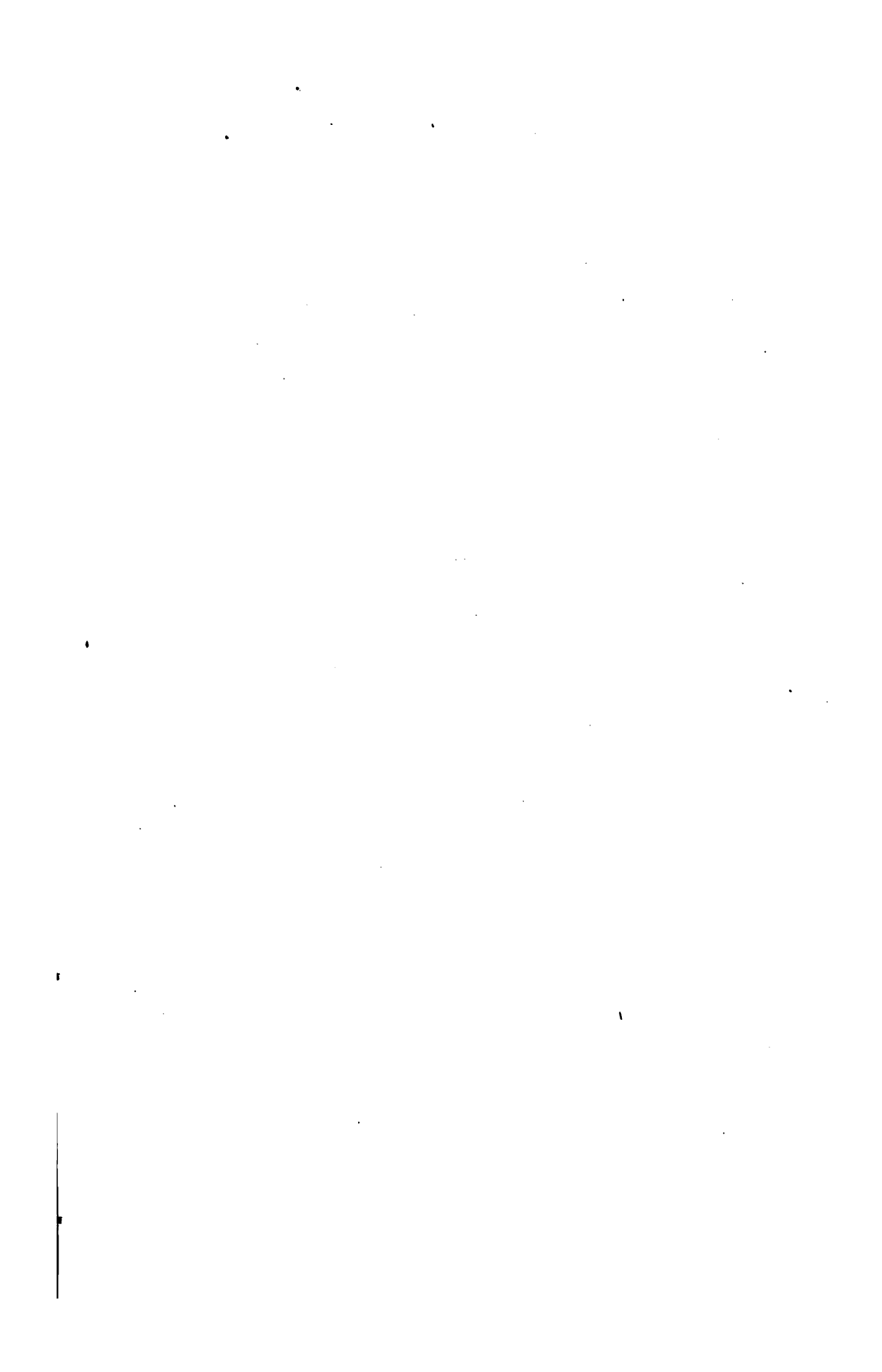


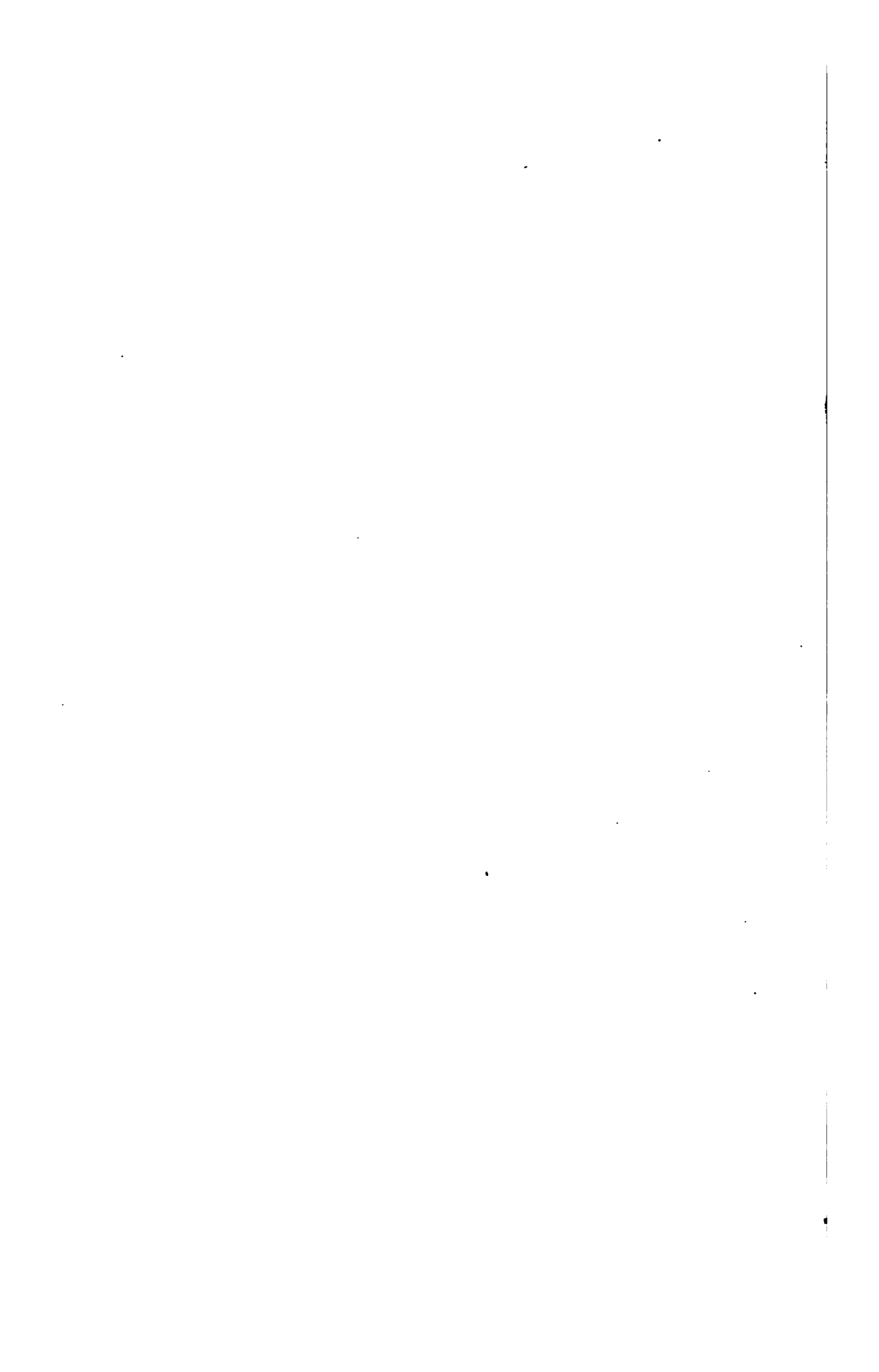


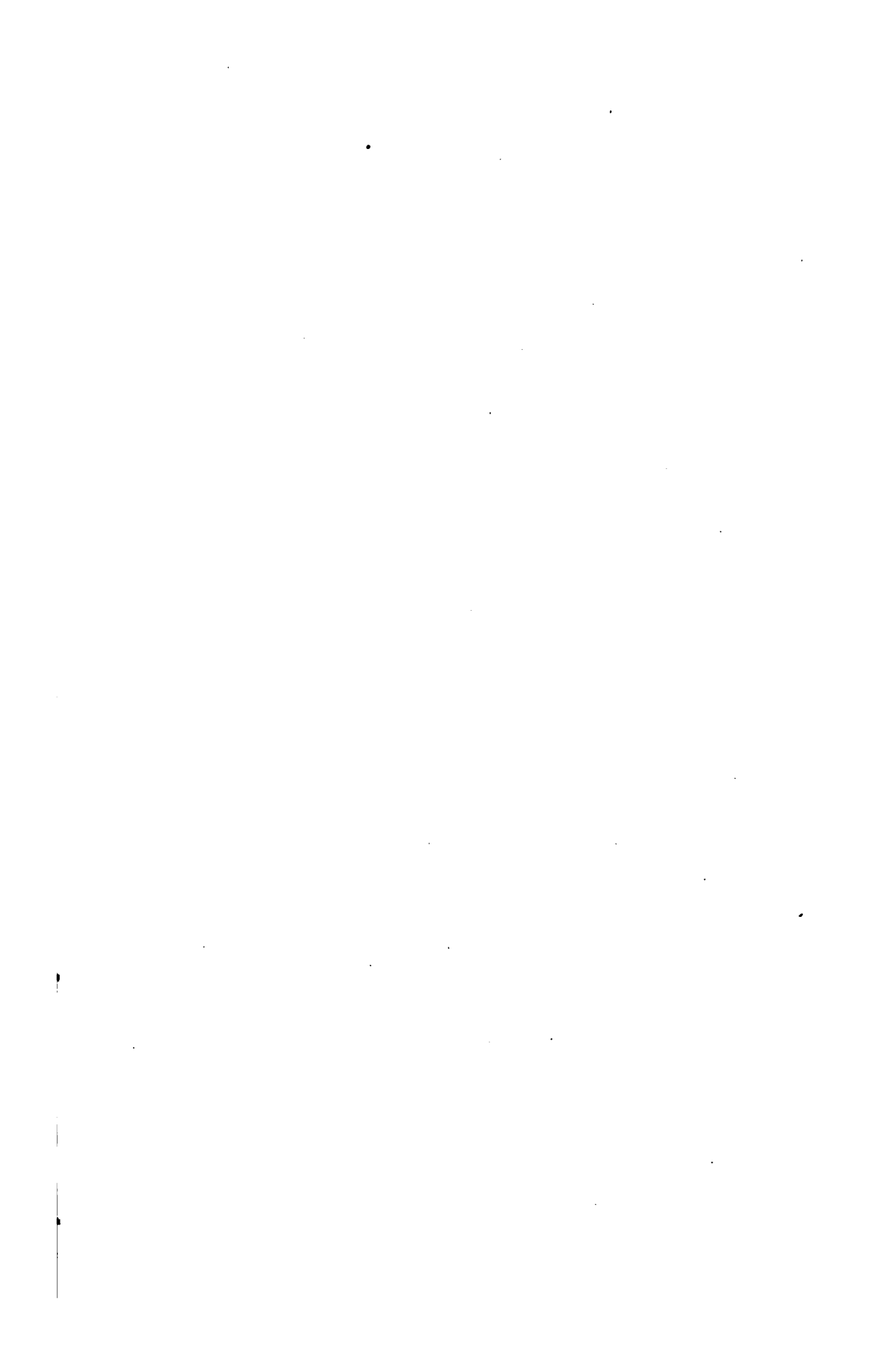


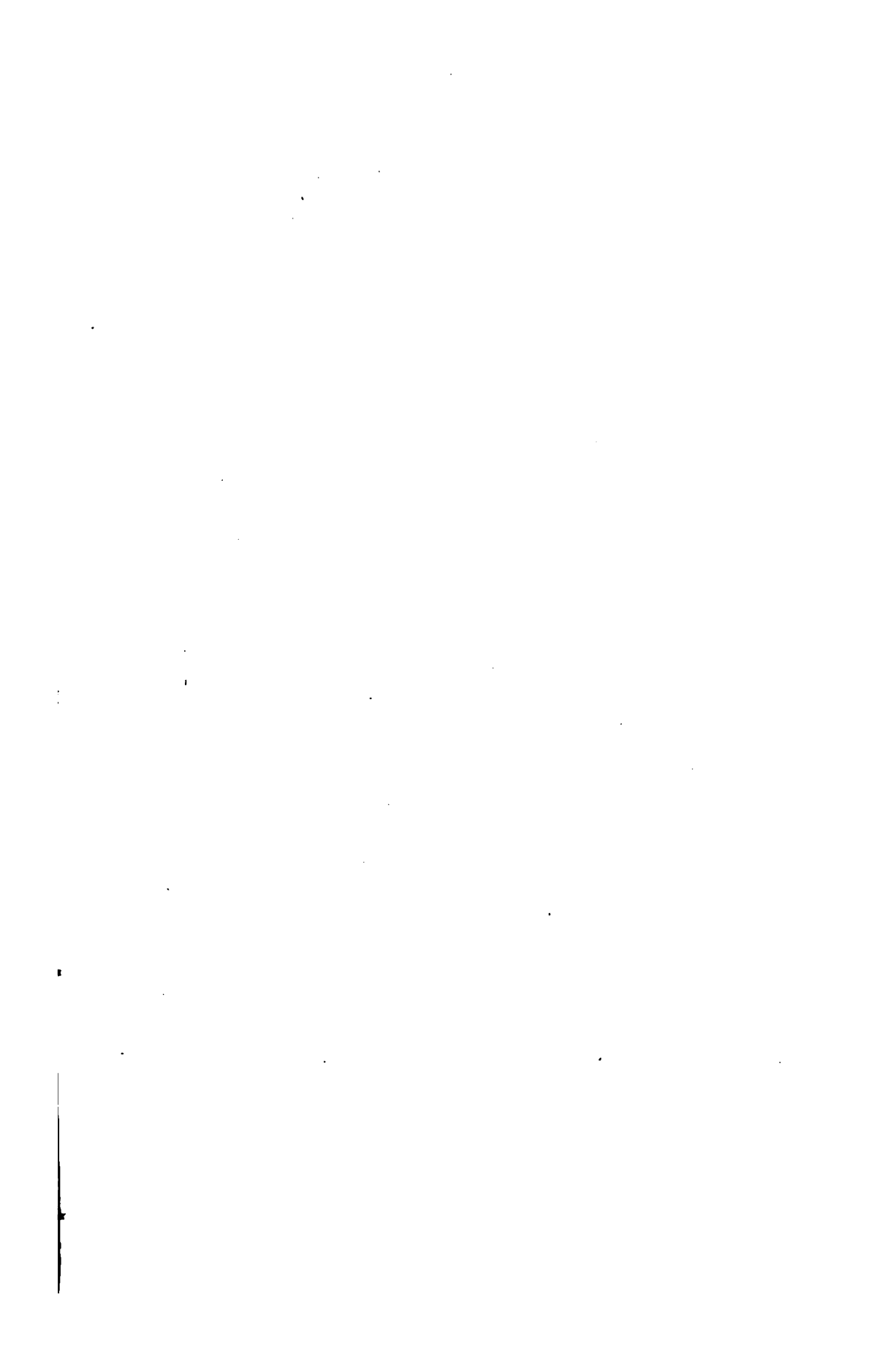


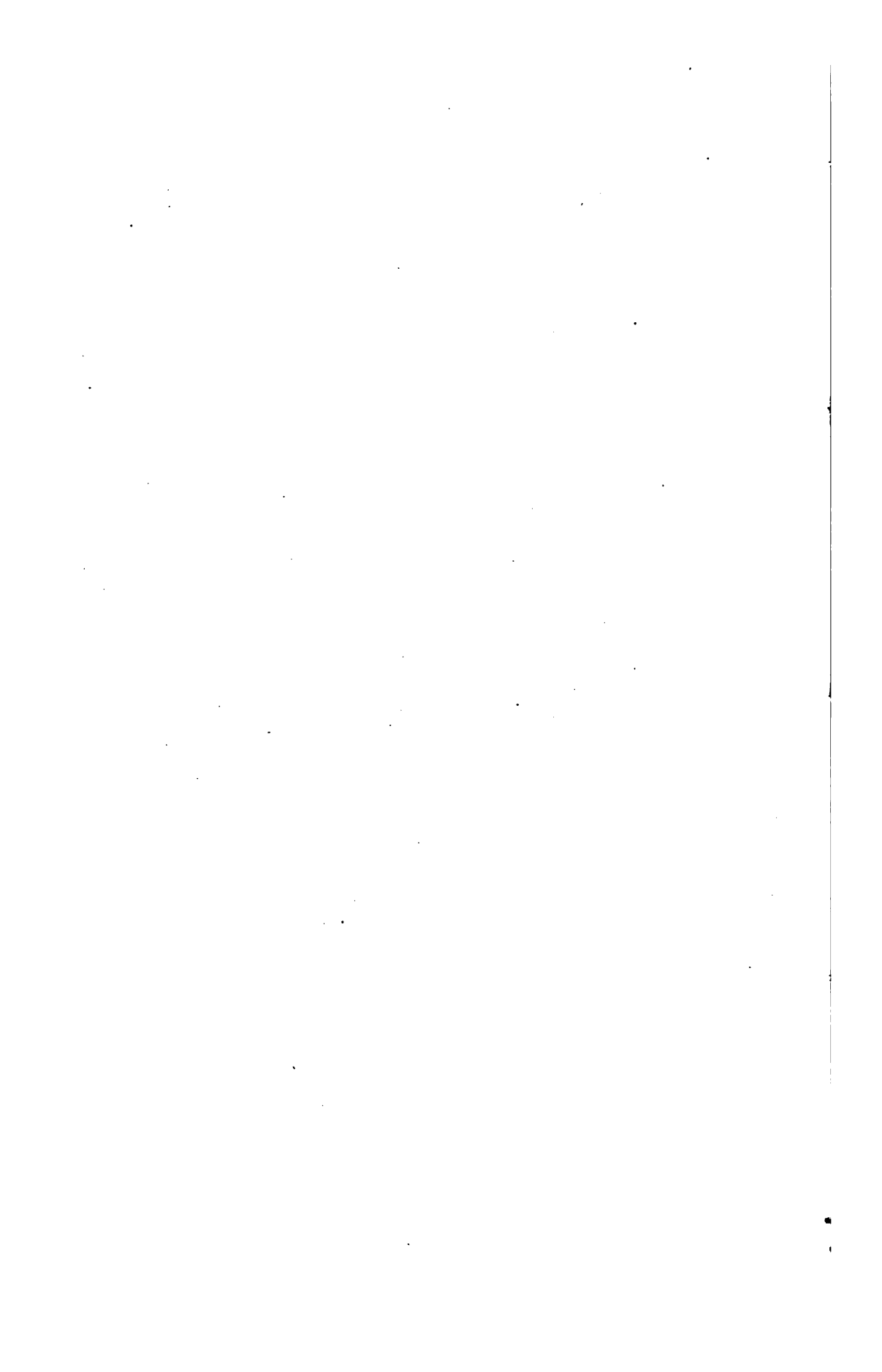


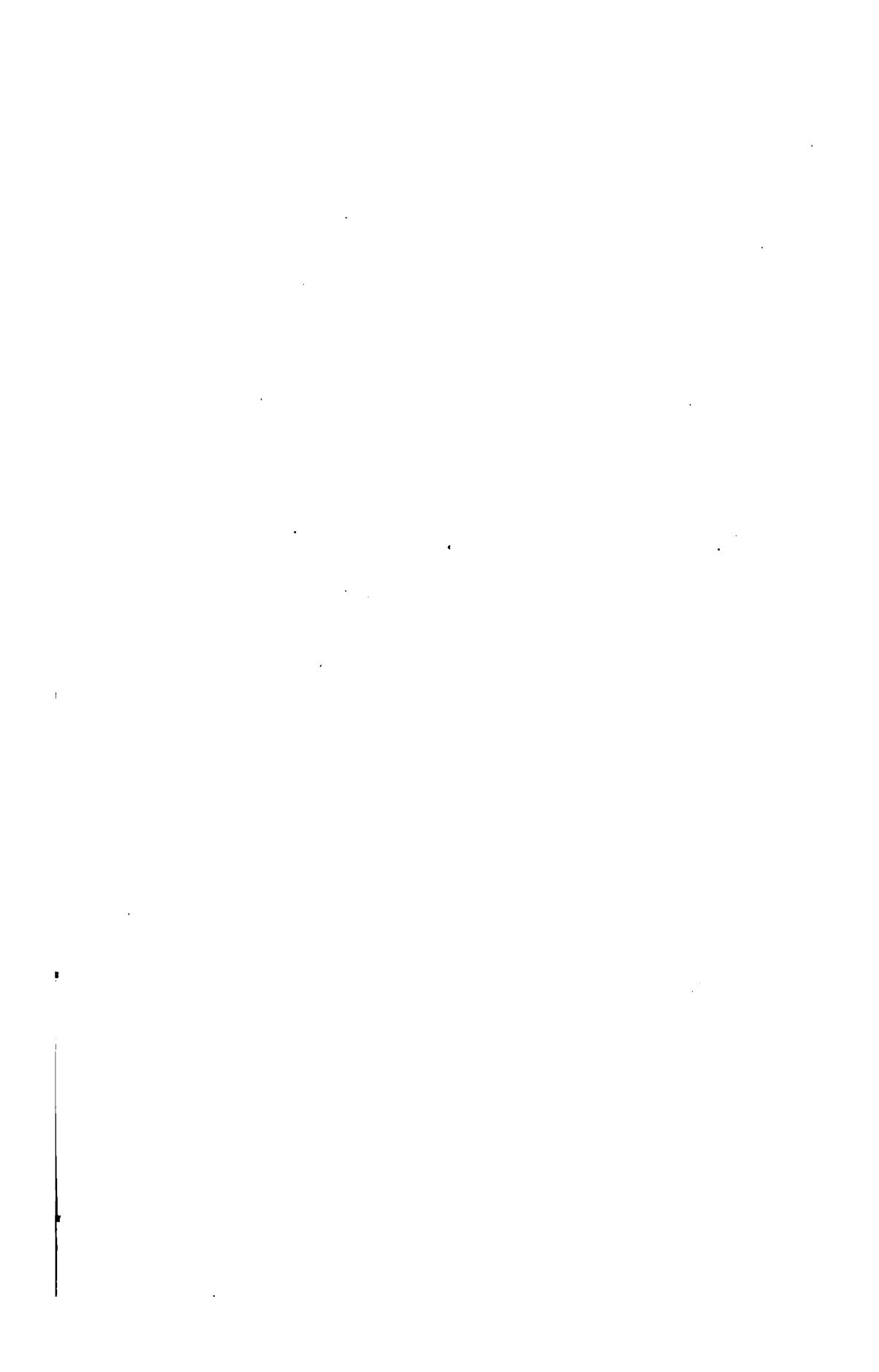


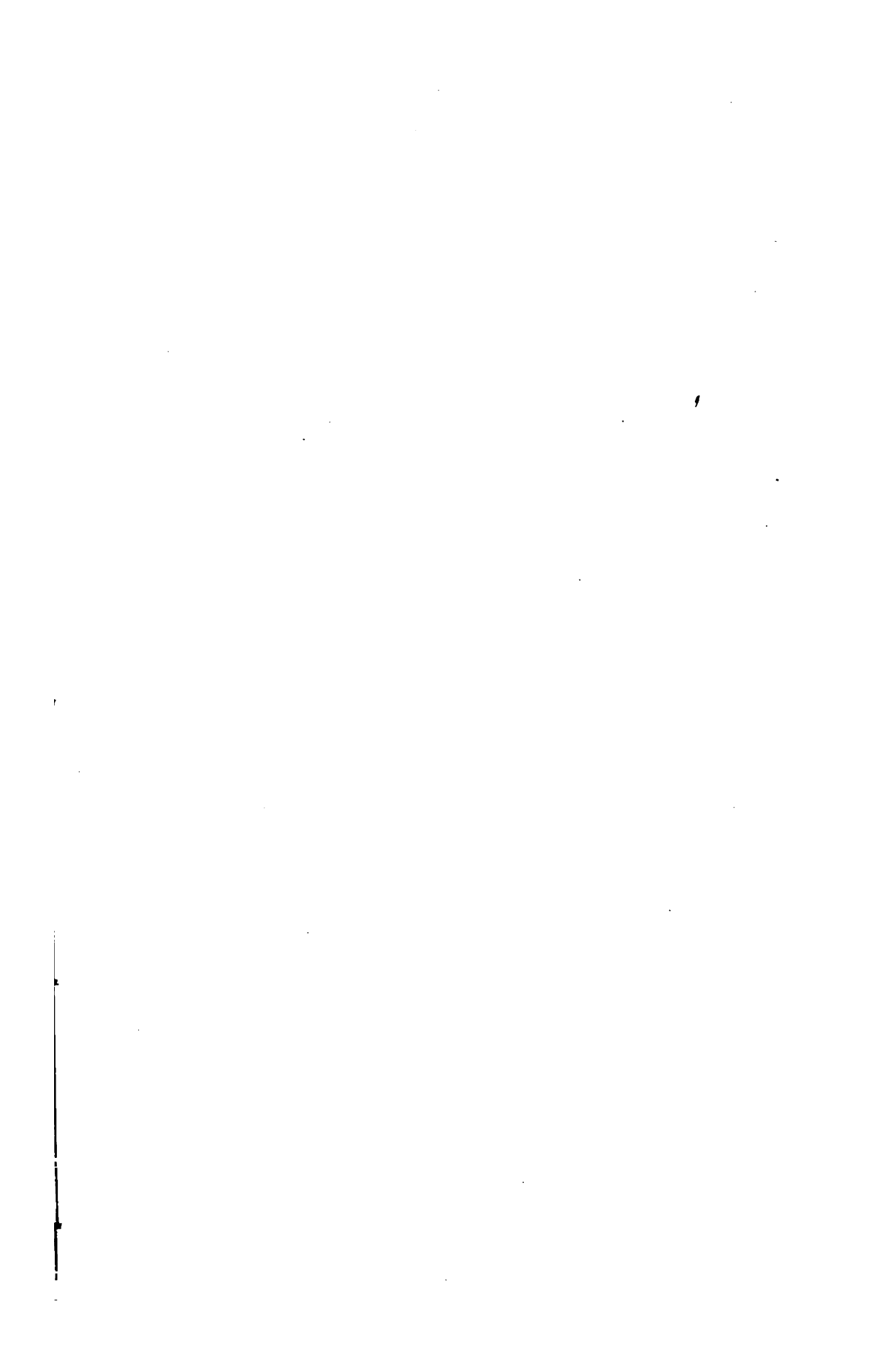


















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